

Chapter 66 - Industrial accidents

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Chapter 66 - Industrial Accidents

General

- 66001 An accident is an IA¹ if
1. the claimant has been involved in an identifiable event or incident which can be described as an accident² **and**
 2. the accident arises out of and in the course of the claimant's employment (see DMG 66301 et seq) **and**
 3. the employment is employed earner's employment (see DMG 66061 et seq) **and**
 4. payment of benefit is not prevented because the accident happened whilst the claimant was outside GB³ (see DMG 66071 et seq).

1 SS Act 98, s 29(6); 2 Secretary of State for Work and Pensions v Scullion [2010] EWCA Civ 310; [2010] AACR 29; 3 SS CB Act 92, s 94(5)

- 66002 If the criteria of DMG 66001 **2.**, **3.** and **4.** are satisfied, the DM should give a favourable accident decision that
1. describes the incident **and**
 2. identifies the part or parts of the body affected.

At this stage the DM does not need to consider whether personal injury resulted from the accident¹. This will only be necessary if the DM receives a claim to benefit as a result of the accident².

1 SS Act 98, s 29; 2 s 30

66003 - 66006

Provision of NINO

- 66007 For the purpose of an accident declaration there is a specific requirement¹ for a claimant to provide sufficient information or evidence to establish their NINO. See DMG 02172 et seq for full guidance.

1 SS A Act 92, s 1(1A) & (1B)

Industrial accident declaration

- 66008 The DM must make and record a declaration that an accident was or was not an IA when a claim to benefit is made¹. The accident decision should still be given if a claim fails on grounds other than the IA question, for example, the accident did not arise out of employed earner's employment.

Note: From 5.12.12 a person will no longer be able to apply for an accident declaration where no IA claim has been made².

1 SS Act 98, s 29(1); 2 WR Act 12, s 68(1)

66009 If an application for an IA declaration is made the DM should note that

1. when a decision has been given it is binding for the purposes of any benefit claim for that accident **and**
2. a second IA decision for any subsequent claim for the same accident cannot be given except on revision or supersession.

Note: See DMG Chapter 03 for guidance on revision and DMG Chapter 04 for guidance on supersession.

66010 Any decision that there was, or was not, an IA is final. The decision can only be changed on appeal or revision¹ (see DMG Chapter 03).

1 SS Act 98, s 29(7)

Refusal to give an industrial accident declaration

66011 The DM may refuse to give an IA declaration if satisfied that it is unlikely to be needed for any claim to benefit. There is a right of appeal against such a refusal¹.

1 SS Act 98, s 29(3) & (7)

66012 Refusals to decide the accident questions should be rare. The DM should not refuse to decide the question just because there is doubt about what decision to give. The question should be decided on the balance of probabilities. However, if the DM refuses to decide the question, all the relevant information should be annotated and retained in the same way as if the accident question had been decided.

66013 - 66029

Extension of “arising out of and in the course of”

66030 In certain situations accidents may be treated as “arising out of and in the course of employed earner’s employment”. Guidance on these provisions is at

1. DMG 66556 - 66564 for accidents happening while acting in breach of regulations or absence of instructions¹
2. DMG 66571 - 66595 for accidents happening while travelling in employer’s transport²
3. DMG 66611 - 66628 for accidents happening while meeting an emergency³

4. DMG 66631 - 66659 for accidents caused by
 - 4.1 other persons' misconduct **or**
 - 4.2 animals **or**
 - 4.3 being struck by an object or lightning⁴.

1 SS CB Act 92, s 98; 2 s 99; 3 s 100; 4 s 101

66031 - 66035

Notice of accident and obligations of the employer

66036 An employed earner who suffers personal injury by accident for which benefit may be payable must by law report the accident by giving notice to

1. the employer **or**
2. a person supervising the injured person's work at the time of the accident **or**
3. a person authorized by the employer to accept such notice¹.

Note: Notice may be given orally or in writing and may be given by somebody acting on the injured person's behalf².

1 SS (C&P) Regs 79, reg 24(2); 2 reg 24(1)

66037 Notice should be given

1. at the time of the accident **or**
2. as soon afterwards as it is practicable to do so.

An entry made by or on behalf of the injured person and kept in the manner prescribed is sufficient notice of the accident¹.

1 SS (C&P) Regs 79, reg 24(3) & (5)

66038 The record of the notice of accident should include

1. full name, address and occupation of the injured person
2. date and time of the accident
3. place where the accident happened
4. cause and nature of the injury
5. name, address and occupation of the person giving the notice, if not the injured person¹.

1 SS (C&P) Regs 79, Sch 4

66039 By law the employer must

1. investigate every reported accident¹ **and**
2. record any discrepancies between the notice given and the results of the investigations² **and**

3. if DMG 66040 applies
 - 3.1 keep a record of the details of each accident in a form approved by the Secretary of State (whether in a book or by electronic means)³ **and**
 - 3.2 retain each record for a period of at least three years from the date of entry⁴ **and**
4. give an officer of DWP any information about an alleged accident which may be required to decide a claim for benefit⁵.

1 SS (C&P) Regs 79, reg 25(1); 2 reg 25(1); 3 reg 25(3)(a); 4 reg 25(3)(b); 5 reg 25(2)

66040 DMG 66039 3. applies to every employer¹ who

1. owns or occupies any
 - 1.1 mine **or**
 - 1.2 quarry **or**
 - 1.3 premises to which specific legislation applies² **or**
2. normally employs ten or more people at the same time on or about the same premises in connection with their trade or business.

1 SS (C&P) Regs 79, reg 25(3); 2 Factories Act 1961

66041 - 66044

Unreported or unwitnessed accident

66045 When considering an unreported or unwitnessed accident the DM should note that

1. if notice of an accident is given and recorded by the employer soon after it happened this is usually enough to prove a claim that there was an accident
2. the absence of a record does not mean that the claim cannot succeed but any long delay in reporting an accident may throw doubt on the claim and should be carefully investigated
3. corroboration by witnesses is helpful in cases where there is doubt over whether an accident occurred.

66046 The DM should also consider

1. whether there is a reasonable explanation for the absence of
 - 1.1 witnesses **or**
 - 1.2 a notice of accident **or**
 - 1.3 a record in the accident book
2. whether the claimant's account of the accident is consistent and credible
3. the medical evidence to decide whether the alleged accident resulted in the diagnosed injury and whether any injury was suffered

4. the interviewing officer's opinion of the claimant's honesty.

Note 1: For the purposes of 1. it may be established that the claimant was working alone at the time of the alleged accident and thought the accident was trivial. If there is evidence that the claimant was not working alone, or if it cannot be confirmed that the claimant was working at the relevant time, the DM may doubt the reliability of the claimant's story.

Note 2: For the purposes of 2. enquiries should be made of the employer to clarify any points.

Claim made long after the date of incident

66047 When a claim or application for an IA declaration is made a long time after the date of alleged incident the DM should consider the case very carefully. The evidence may indicate that

1. the claimant thought the incident was too trivial to report at the time **or**
2. there were no immediate signs of any material injury.

66048 Evidence of this kind casts doubt on the occurrence and nature of the incident. The question arises whether a claimant's condition is

1. the result of injury **or**
2. due to constitutional or other causes and the claimant has just looked for an event to which it may be attributed.

The claimant may be genuinely convinced that the incident is responsible for the condition. In such cases the causation question may be difficult to decide and the DM may need to seek medical advice (see DMG 66111 et seq).

66049 The degree of proof is the same for all accident cases regardless of the length of time involved. The claimant must show on the balance of probabilities that an accident occurred. However, because of factors such as

1. destruction of records **and**
2. problems of tracing witnesses

the more remote in time the claim or application is from the date of the alleged accident the more likely it is that the claimant will have difficulty in providing the necessary evidence to prove the claim.

66050 The DM may give a favourable accident decision despite the period of delay involved if

1. a clear cut incident (such as one involving obvious injury) was reported and recorded at the time, or if reported late the DM is satisfied after further enquiry that an incident as described took place **and**
2. a satisfactory explanation has been given or it is clear for other reasons why a claim or an application for an accident declaration was not made at the time.

66051 - 66054

Prescribed diseases caused by industrial accident

66055 Benefit can be paid for

1. injuries **and**
2. diseases which are prescribed for employed earners in certain occupations¹.

A claimant may contract a disease because of an IA in prescribed circumstances. The claimant may be entitled to benefit for the PD and the IA. However, benefit can only be awarded under one heading.

1 SS CB Act 92, s 108(1)(a) & (b)

66056 Benefit must be based on the PD if at the time of the accident

1. a disease is prescribed for a claimant **and**
2. the injury resulting from the accident is the contraction of the disease¹.

It does not matter that the claim was made on the basis of an IA.

1 SS CB Act 92, s 108(6)

Example

A man employed in an occupation involving the use of carbon tetrachloride is poisoned by fumes when a container is accidentally broken and suffers liver toxicity as a result. Liver toxicity is a disease prescribed for him (PD C26). Although he has had an IA, benefit is considered under the PD provisions because he has suffered no other injury.

66057 Benefit should be based on injury by IA if

1. an IA causes injury **and**
2. the PD results from that injury even if the injury is slight and the disease develops soon after the accident.

Example

A miner suffers a blow on the knee by IA causing bruising and abrasions. Subcutaneous cellulitis of the knee (PD A6) develops. Whilst the disease clearly

stems from the effects of the physical injury, it is not the injury itself. Benefit should be based on injury by IA.

66058 If, after an IA, a disease develops that is

1. not on the list of PDs **or**
2. prescribed but not for the claimant's occupation¹

payment of benefit should be based on injury by IA².

1 SS (II)(PD) Regs, Sch 1; 2 SS CB Act 92, s 108(6)

66059 - 66060

Employed earner's employment

66061 To qualify as an IA an accident must arise out of and in the course of **employed earner's employment**¹.

1 SS Act 98, s 29(6)(b)

66062 An employed earner is a person who is gainfully employed in GB

1. under a contract of service **or**
2. in an office (including an elective office) with general earnings¹.

1 SS CB Act 92, s 2(1)(a); Income Tax (Earnings and Pensions) Act 2003, s 7(3)

66063 Some groups of people are treated as employed earners for IIDB purposes¹. They include special constables² and certain members of a RNLI lifeboat crew³. Other groups of people are not treated as employed earners for IIDB purposes⁴. Also people who are

1. members of HMF, whether serving or not⁵ **or**
2. prisoners working (whether paid at the commercial rate or not) during periods of legal custody

are not covered by the IIDB provisions.

1 SS (Employed Earners' Employment for Industrial Injuries Purposes) Regs 75, reg 2 & Sch I, Part I; 2 Sch I, Part I, para 6; 3 Sch II, Part I, para 7; 4 reg 3 & Sch I, Part II; 5 SS CB Act 92, s 115(3)

66064 People on employment and training schemes that are funded out of public funds

1. by the Young People's Learning Agency for England, the Chief Executive of Skills Funding **or**
2. by or on behalf of
 - 1.1 the Secretary of State **or**
 - 1.2 Scottish Enterprise **or**
 - 1.3 the Highlands and Islands Enterprise **or**
 - 1.4 Skills Development Scotland **or**

1.5 Scottish Ministers or

1.6 Welsh Ministers

are employees or trainees. Employees get a wage from their employer. Trainees get a training allowance with no income tax or NI contributions deducted. However, where DMG 66065 applies, trainees are regarded as employed earners.

66065 From 31.10.13 people on employment training schemes or employment training courses

1. provided under arrangements made by or on behalf of

1.1 the Secretary of State or

1.2 Scottish or Welsh Ministers

under specified legislation¹ **or**

2. which constitute, or participation in which forms part of, a mandatory work scheme (“work for your benefit” schemes etc.)² **or**

3. in which they participate because of

3.1 a work-related activity requirement³ or

3.2 a work preparation requirement⁴

are to be regarded as employed earners⁵ for the purposes of making a claim for IIDB.

1 II (ETS & C) Regs, reg 2(a); E & T Act 73, s 2; 2 II (ETS & C) Regs, reg 2(b); JS Act 95, s 17A;

3 II (ETS & C) Regs, reg 2(c)(i); WR Act 07, s 13; 4 II (ETS & C) Regs, reg 2(c)(ii);

JS Act 95, s 6C; WR Act 07, s 11C; WR Act 12, s 16; 5 SS CB Act 92, s 95A(1)

66066 People providing

1. an employment training scheme **or**

2. an employment training course

as in DMG 66065 will be an employer¹ for the purposes of a claim for IIDB.

1 II (ETS & C) Regs, reg 3

66067 The DM should give an informal opinion on employed earner’s employment. If the DM

1. accepts that it is employed earner’s employment, no further question on the employment status arises **or**

2. does not accept that the claimant is in employed earner’s employment at the relevant date, then the claim or application may be disallowed for that reason.

66068 Where the claimant disputes the disallowance, the case should be referred to HMRC for a formal decision on employed earner’s employment.

66069 If HMRC's formal decision is that the claimant was employed in employed earner's employment, the appeal must then be forwarded to the FtT as the circumstances in which an accident decision can be reconsidered are very limited¹.

1 SS Act 98, s 29(7)

66070 Where, exceptionally, a FtT or UT considers that the question of employment status arises in a case where the DM has accepted that the claimant was employed in employed earner's employment, they will direct the DM to refer the question for a formal decision¹ to HMRC.

1 CI/401/50(KL); R(I) 2/75; SS CS (D&A) Regs, reg 38A(1)

Accidents outside Great Britain

66071 Benefit is not payable for an accident occurring while the employed earner is outside GB¹ unless

1. the special provisions for mariners and aircrew apply² (see DMG Chapter 07)
or
2. the special provisions for employment in designated areas of the continental shelf apply³ (see DMG Chapter 07) **or**
3. a convention on SS matters exists with the country in which the accident occurred⁴ (see DMG Chapter 07) **or**
4. the accident occurs in an EEA country⁵ (see DMG Chapter 07) **or**
5. the special provisions for employment in prescribed areas apply⁶ (see DMG Chapter 07) **or**
6. the special provisions apply for people who are paying
 - 6.1 class 1 contributions under specific legislation⁷ **or**
 - 6.2 class 2 (volunteer development worker) contributions⁸.

Note: People who have an IA while temporarily outside GB can satisfy 6.. They will have underlying entitlement to IIDB whilst outside GB but it will be payable only from the date of their return to GB.

*1 SS CB Act 92, s 94(5); 2 s 117; 3 s 120; 4 SS A Act 92, s 179(a)(b)
5 Reg (EEC) 1408/71 & 574/72; 6 SS Ben (PA) Regs, reg 10C;
7 SS (Conts Regs), reg 146; 8 SS Ben (PA) Regs, reg 10C(5) & (6)*

Accidents in Great Britain

66072 For the purposes of deciding accident questions GB consists of

1. England
2. Scotland
3. Wales
4. the adjacent islands
5. territorial waters and the air space above¹.

1 R(S) 8/59

66073 GB does not include

1. the Channel Islands¹
2. the Republic of Ireland
3. Northern Ireland
4. the Isle of Man
5. British ships on the high seas²
6. British-owned aeroplanes flying over the high seas³
7. British Embassies⁴.

1 R(P) 2/64; 2 CP93/49 (KL); 3 R(S) 8/59; 4 R(I) 44/61

66074 The DM decides the IA question for an accident which occurs outside GB. Where the exceptions in DMG 66071 do not apply, the DM should impose a disallowance on the basis that the accident occurred outside GB¹. The DM should give an informal opinion on employed earners employment for

1. mariners
2. aircrew
3. designated area workers
4. members of EEA countries
5. cases where a Convention exists with the country in which the accident occurred.

Any request for an informal opinion on employed earners employment should not normally be made until the DM is satisfied that DMG 66001 **2.** and **4.** are satisfied. Where there is a dispute on the employed earner's employment question the DM should refer the question to HMRC for a formal decision on employed earner's employment. There is a right of appeal against such a decision and any appeals on this element only should be referred to HMRC².

1 SS Act 98, s 29(6)(c); 2 Sch 3(11)

66075 Guidance on how EC legislation affects IIDB following an IA and guidance on countries with whom the UK has a reciprocal agreement is in DMG Chapter 07.

General

66076 “Accident” means a mishap or untoward event which is not planned or wished by the employed earner and happens by chance. It covers

1. obvious events such as
 - 1.1 accidents with machinery **and**
 - 1.2 falls, blows and burns **and**
2. mishaps in which the only untoward event is the occurrence of the injury itself such as
 - 2.1 hernia
 - 2.2 prolapsed intervertebral disc
 - 2.3 heart conditions
 - 2.4 nervous shock **and**
 - 2.5 fright.

Note: An accident, for IIDB purposes, must involve the person, and not possessions such as tools and clothing¹, however it may include damage to prostheses².

1 R(I) 7/56; 2 R(I) 8/81

66077 The conditions mentioned in DMG 66076 **2.** are often constitutional in origin meaning that they may arise naturally and not as the result of an accident. The DM should have clear evidence that the condition resulted from the person’s work before giving a favourable decision on the IA question.

Whether accidental

66078 A mishap or untoward event is accidental unless it was deliberately planned and desired by the injured person. For example

1. an injury caused by the negligence or foolhardiness of the injured person, is still accidental if it was not desired or intended by the person
2. some occupations carry a special risk of injury which may occur frequently and not unexpectedly owing to the hazards of the job but this does not prevent these injuries being accidental from the injured person’s point of view

3. the DM may regard as accidental an injury caused by
 - 3.1 the deliberate performance of a dangerous act **or**
 - 3.2 exposure to a known risk **or**
 - 3.3 the deliberate act of another person, for example through assault or playing practical jokes.

If 1. or 3. applies the DM should carefully consider whether the accident arose out of and in the course of the person's employed earner's employment.

Vaccination or injection

66079 Vaccination or injection, and any expected reaction which may follow it¹, does not constitute injury by accident. But the DM can accept personal injury by accident if the vaccine or injection results directly in

1. an unforeseen infection **or**
2. some unexpected mental or physical reaction.

1 R(I) 12/58; R(I) 15/61

66080 The date of the vaccination or injection is the date of the accident. If the DM

1. is not sure whether the claimant's condition is a reaction which may normally be expected, medical advice should be obtained **or**
2. accepts it as an accidental injury, the "arising out of and in the course of" condition should then be considered.

Self-inflicted injury or suicide

66081 Self-inflicted injury or suicide cannot be accidental since they are deliberately planned and wished for by the person concerned. If there is any doubt about the events leading up to death, the burden of proving that suicide occurred rests with the person who suggests suicide as an explanation of that death¹. If the coroner has recorded a verdict of suicide, accept that verdict.

1 CI 113/50(KL); CSI 23/50(KL); R(I) 47/59

66082 Where a

1. person who has suffered an industrial injury later attempts or commits suicide **and**
2. claim for benefit is made as a result

the DM should decide whether the further injury results from the earlier injury or whether a new cause is responsible¹.

1 CSI 23/50(KL)

Shock or fright

- 66083 Shock or fright suffered at work by a person who witnesses, or learns of, a frightening or tragic event may be injury by accident. But it does not follow that the accident has arisen out of the person's employment¹ (see DMG 66713).

1 R(I) 22/59

Accident as distinguished from process

- 66084 There is a clear distinction between injury by accident and injury by process. Injury by process is not covered by the IIDB scheme. Injury by accident is when there is a

1. single accident that results in injury¹ **or**
2. series of specific and identifiable accidents followed by an injury which may be the result of any or all of them².

1 CI 257/49(KL); 2 Roberts v. Dorothea Slate Quarries Co Ltd [1948] 2 AER 201

- 66085 The features of injury by process are that

1. there is a continuous process going on substantially from day to day but not necessarily from minute to minute or even from hour to hour **and**
2. the process produces incapacity gradually over a period of years.

Ordinary incidents occurring in the course of work cannot be regarded as accidents. They are the ordinary wear and tear of the work¹.

1 R(I) 11/74, Appendix

Example

A claimant who sits hunched all day over a workbench develops back pain and makes a claim for an accident. The DM decides there was no identifiable incident which could be accepted as an accident. The claimant's back pain was caused by bad posture over many years.

- 66086 The DM can accept the case as one of injury by **accident**¹ where it can be shown that an injury

1. results from a single accident **or**
2. is the result of a series of minute similar injuries by accident, each of which is separate and identifiable.

1 CI 123/49(KL); R(I) 77/51; R(I) 43/61; R(I) 4/62

- 66087 Where

1. the condition is due to many unidentifiable incidents over a period of time (the length of which may not be important) **and**

2. the incidents lack the characteristics of an accident, using the word in the normal, non-technical sense (see DMG 66076) **and**
3. it is not possible to point to a definite pathological change taking place at a particular time, that is, a time when the claimant's physical or mental health suffered a definite change for the worse

the DM should regard the case as one of injury by **process** and disallow the claim on the ground that the claimant has not suffered an IA¹.

1 R(I) 11/74 Appendix, CI 83/50(KL); CI 125/50(KL); R(I) 25/52; R(I) 32/60; R(I) 7/66

66088 Most accident claims considered under these principles are as a result of

1. work involving a specialized action of a strenuous nature, when it must be shown that
 - 1.1 there was an incident or series of incidents of exceptional stress¹ **and**
 - 1.2 each incident caused injury to some degree² **or**
2. work in a particular posture **or**
3. unhealthy working conditions, when it must be shown that on a particular occasion or for a particular short period, conditions were worse than usual **or**
4. exposure to the weather, when it must be shown that on a particular occasion or occasions there was, as a result only of the employment, exposure to particularly severe weather conditions resulting in harm to the employee.

*1 Secretary of State for Work and Pensions v Scullion [2010] EWCA Civ 310; [2010] AACR 29;
2 R(I) 77/51; R(I) 43/55; R(I) 43/61; R(I) 4/62*

66089 Where a person's condition could be the result of more than one event at work, the DM should direct enquiries to consider the likelihood of

1. some identifiable unforeseen or unexpected event at a particular time **or**
2. a series of such events which would have caused a worsening or aggravation of that condition.

66090 A person who has been in a strenuous occupation for some time may become incapable of work after experiencing difficulty with the work on a particular occasion. On such an occasion the work causes a reaction greater than that normally experienced. The DM should direct that information is obtained about

1. the claimant's work (see DMG 66091)
2. the incident or incidents said to be responsible for the injury (see DMG 66092)
3. the condition complained of (see DMG 66093).

Examination of the causes of previous incapacity may also be of value.

66091 For the purposes of DMG 66090 1. the information to be obtained about the claimant's work is

1. a full description of the working conditions, the claimant's work and the operations involved in it
2. how long the claimant has been engaged on the work in question
3. whether there has been any change in the type of work or working conditions during the period that the claimant has been engaged on it and, if so, what and when.

66092 For the purposes of DMG 66090 2. the information to be obtained about the incident or incidents said to be responsible for the injury is

1. whether there was any untoward event
2. its cause and frequency
3. whether separately identifiable.

66093 For the purposes of DMG 66090 3. the information to be obtained about the condition complained of is

1. when it was first experienced
2. whether it was first felt while the claimant was at work
3. whether it followed immediately after one of the alleged untoward events
4. if first felt outside working hours, what the claimant was doing at the time.

66094 In deciding whether injury was due to accident or process the DM should note that

1. the claimant must show that the condition was the result of an accident
2. it is not enough for the claimant to show that the condition was caused by work
3. if the evidence shows that a case is one of injury by process, disallowance is appropriate on the grounds that the claimant has not established that there was an IA
4. the longer the period over which the events occur (particularly if they are in themselves trivial) the less likely it is that the resultant condition can be accepted as accidentally caused
5. minor, untoward events over a space of hours or several days may be acceptable as causing injury by accident
6. minor, untoward events over a period of weeks or months are more likely to be evidence of process.

Stress-related incidents

Introduction

66095 Claims from people who allege they have suffered an IA as the result of stress will need to be considered carefully. Such incidents very often result from factors which have accumulated over a long period of time and may properly be considered as injury by process.

66096 The House of Lords¹ reviewed earlier cases of the Courts considering the phrase “injury by accident” and concluded that they may have been expressed too widely. They also held that cases involving stress and psychological injury called for particularly detailed examination.

1 CAO v Faulds [2000] 2 All ER 961 R(I) 1/00

General principles

66097 The judgment emphasises that the DM must look for an incident or series of incidents which can be described as an accident(s) to which the claimant’s condition can be attributed. It also emphasises that cases involving psychiatric or stress-related illness may need detailed investigation. For psychiatric or stress-related illness to be accepted as personal injury by accident the DM must be satisfied that

1. an event or incident has occurred (see DMG 66098)
2. personal injury has been suffered: it must be established (on the basis of medical evidence) that personal injury has occurred
3. the event or incident caused the injury: the claimant must prove on the balance of probability that the injury from which they are suffering was caused directly by the event which is claimed was the accident.

Note: For the purposes of **2.** this will usually be a psychiatric illness (e.g. post traumatic stress disorder or depression). However, unpleasant emotions such as grief, anger and resentment or common human conditions such as anxiety or stress will not normally take the form of injury.

66098 For the purposes of DMG 66097 **1.** the DM should note that

1. there has to be an identifiable event(s) or incident(s) which can be described as an accident¹
2. an accident is something which can be reported orally or in writing as soon as practicable after the event (see DMG 66036 - 66039). If the incident has not been entered in the accident book take action as in DMG 66045 - 66046

3. the word 'accident' is to be understood in its ordinary everyday sense
4. whilst an accident would not be something that occurs with any regularity or frequency it need not be a rare or exceptional happening
5. the occupation in which the person was engaged should be taken into account
6. it is important to distinguish between accident and process.

Note 1: For the purposes of **5.** the mere fact of suffering stress or developing some illness or disorder resulting from being engaged in an occupation which by its nature is stressful (e.g. firemen, police officers, prison officers) will not bring the sufferer within the act. This does not mean that an accident can never occur in such an occupation.

Note 2: For the purposes of **6.** an accident will normally consist of a single spontaneous event (or a series of such events) which causes personal injury. If no particular event can be identified or the injury is said to be due to an ongoing process over a period of time an accident declaration will not normally be appropriate.

1 Secretary of State for Work and Pensions v Scullion [2010] EWCA Civ 310; [2010] AACR 29

- 66099 DMG 66100 - 66104 gives guidance on factors to be considered to help the DM decide whether an accident has occurred. However, the DM should note that this guidance is not an exhaustive list and other factors may need to be considered in particular cases.
- 66100 If DMs have to consider what was involved in the incident, for example if the claim is made by a member of the emergency services, they should establish
1. what the duties were at the time **and**
 2. whether the person specially trained on those duties **and**
 3. whether an accident reported in the accident book.
- 66101 DMs may have to consider whether an accident or crime was viewed as it happened or whether the scene was observed later. In such cases they should establish whether
1. the person had been exposed to such incidents before **and**
 2. anything happened to the person as a result **and**
 3. there were any witnesses.
- 66102 DMs may have to consider whether work continued after the incident occurred and when incapacity commenced. In such cases they should establish
1. when medical advice was sought **and**

2. whether there have been previous psychiatric or stress-related periods of incapacity and if so what the cause was **and**

3. whether the employer can provide any sickness records.
- 66103 If there was a delay between the incident and the claimant seeking medical help, the DM should establish
1. why advice was sought **and**
 2. what was the reason for the delay.
- 66104 If ill health retirement has been authorised, the DM should establish
1. when it commenced **and**
 2. on what grounds it was applied for and granted.
- 66105 Once the evidence is obtained, if there is doubt whether the incident caused the illness, the case should be referred to medical services as in DMG 66116 - 66119. Please attach all BI8s to the file and use Appendix 1 to this Chapter. This asks the questions which help form the basis of whether an accident declaration might be made. In cases where doubt remains, refer the case with all documents to DMA Leeds.
- 66106 Claims from people who allege that they have suffered an IA as a result of a conversation, for example a meeting or appraisal, also need to be considered carefully. A perfectly proper conversation could not be regarded as an untoward event. The facts as in DMG 66097 - 66098 need to be established.
- 66107 DMs should obtain more information from all possible sources including the employer. For example, they should establish
1. whether the meeting was pre-arranged and, if not, how it came about
 2. what was discussed
 3. how the meeting or appraisal was conducted and whether
 - 3.1 the conversation between the parties was
 - 3.1.a normal **or**
 - 3.1.b informal **or**
 - 3.1.c confrontational **and**
 - 3.2 there was aggression between the parties
 4. whether work continued after the incident occurred and when incapacity commenced (the factors at DMG 66102 should be considered)
 5. whether there is a delay between the incident and the claimant seeking medical help (the factors at DMG 66103 should be considered)
 6. whether ill health retirement has been authorised (the factors at DMG 66104 should be considered).

66108 If there is still doubt after the evidence has been obtained refer for medical advice as in DMG 66105.

66109 For guidance on the terms physiological and pathological change, and other mental health conditions see Appendix 2 to this Chapter.

66110

Cases requiring special consideration

No untoward event or condition of constitutional origin

- 66111 The DM should obtain the fullest possible evidence when the claimant
1. appears to have suffered a pathological change during the course of employment and there has been no obvious accident **or**
 2. has a constitutional condition and attributes the incapacity to work.

- 66112 The DM should accept an incident at work as an IA if the incident
1. had the characteristics of an accident **and**
 2. satisfies DMG 66001.

Similarly, if all the evidence supports an injury caused by work, at a specific time and there is no reason to doubt the evidence, the DM may allow the claim without medical advice.

- 66113 The conditions listed in DMG 66114 should not be linked to an industrial cause without first seeking medical advice on whether
1. there was a pathological change **and**
 2. the activity involved made a material contribution to that change.

- 66114 The DM should seek advice when a doctor's statement or other evidence suggests that any of the following conditions may be involved
1. heart conditions such as myocardial infarction, myocardial ischaemia, coronary thrombosis, angina or fibrillation (see DMG 66121 et seq)
 2. strokes (see DMG 66135 - 66136)
 3. malignant conditions
 4. conditions of the central nervous system such as multiple sclerosis or motor neurone disease
 5. conditions which are suspected to be more serious than that implied by the stated diagnosis.

The DM should also seek medical advice if the claimant alleges exposure at work to sensitizing agents (see DMG 66137 et seq).

- 66115 With other conditions medical advice is not as essential. The DM only needs to seek medical opinion in cases where it is not possible to make a decision on the available evidence, such as

1. back conditions (see DMG 66151 et seq)
2. hernia (see DMG 66163 et seq)
3. tennis elbow (see DMG 66175 et seq)
4. conditions ending in "itis" or "osis"
5. eye conditions such as glaucoma or detached retina
6. exposure to or contact with poisonous or harmful fumes or airborne dust or chemicals
7. asthma, bronchitis or allied respiratory conditions such as emphysema or pneumoconiosis.

Seeking medical advice

66116 The DM should investigate any evidence that needs clarification before seeking medical advice. People should be asked for written consent for factual reports to be obtained from

1. their GP **or**
2. any hospital that they have attended for the alleged condition.

The claimant normally gives this consent when they sign the declaration on a BI 100 series claim form.

66117 When seeking medical advice the DM should state the facts clearly and fully. Medical advisers need to know, for example, whether the DM accepts that the claimant felt pain whilst carrying out a certain action. It is not enough just to say that the claimant said that pain was felt.

66118 When seeking medical advice the DM needs to consider what aspects of the case require it. In some cases advice may be needed to decide whether there was an accident. In other cases it may be reasonable to conclude from the beginning that there was an accident, for example, where there is a fall against machinery. Advice may be needed to decide whether the

1. claimant's employment played a material part in the accident **or**
2. accident was the cause of incapacity.

66119 The DM should not accept an accident without medical evidence where the only event was an experience of symptoms for no obvious reason whilst at work. These symptoms could be the

1. first outward signs of a degenerative condition simply coinciding with the fact that the claimant was at work **or**
2. appearance of a pre-existing condition with no fresh pathological change.

Format of reference for medical advice

66120 A basic form for referring a question for medical advice is at Appendix 1 to this Chapter. This can be adapted to suit each individual case, and should be used when it has not been possible to accept that there was an IA or when there is doubt whether the accident can be related to the employment.

Heart (cardiovascular) conditions

General

66121 Cases that involve

1. heart conditions that are said to be due to an incident at work **or**
2. other alleged injuries to the cardio-vascular system (the heart and blood vessels)

generally give rise to complex medical questions. This is because it is difficult to distinguish between pathological changes resulting from constitutional conditions and those caused by accident. Claimants may be sure that they suffered a pathological change as a result of an activity at work. But it may have simply been that they experienced pain arising out of a constitutional cause whilst at work.

66122 The claimant's condition may be described in terms that seem unrelated to the heart, such as "chest pain" or "chest wall strain". The terms most often used are described in DMG 66124 - 66134 to help identify "heart" cases and decide what enquiries need to be made. The notes give basic guidance on the nature and significance of the conditions from the IA point of view.

Note 1: The DM should not treat or quote these notes as authoritative medical notes.

Note 2: In the early stages of incapacity a description of the claimant's condition may have been given before a full clinical investigation. These descriptions may be less precise than later diagnoses.

66123 When considering heart cases the DM

1. should obtain the fullest possible evidence about the alleged incident and its apparent results (see DMG 66160) before seeking medical advice **and**

2. include in the submission for medical advice details
 - 2.1 as in 1. **and**
 - 2.2 of any incapacity if the incident happened within a few days after a return to work after several weeks of incapacity because starting work again could have triggered the present condition **and**
 - 2.3 a copy of any post mortem report in death cases.

Atherosclerosis, atheroma, arteriosclerosis

66124 These terms describe a constitutional and progressive disease which involves the narrowing and hardening of the arteries. Although the onset of the condition is a pathological change for the worse it does not constitute personal injury by accident as the disease itself cannot be caused or worsened by an accident or incident. However, if the disease affects the coronary arteries (the arteries of the heart carrying the blood supply to the heart muscle), it can make a person liable to suffer from any of the conditions in DMG 66125 - 66134 which may themselves be triggered or worsened by accidents or conditions of work.

Ischaemic heart disease (coronary artery disease)

66125 Ischaemia means a reduction in the blood supply due to constriction or narrowing of the arteries to a part of the body. The narrowing is often due to an atheromatous plaque (see DMG 66124). Infarction means the changes that occur in an organ when the blood supply is blocked.

66126 Ischaemic heart disease is caused by the narrowing of the arteries that supply blood to the heart. Angina (chest pain on exertion) (see DMG 66128) is often the first symptom, although the first sign of the disease may be the severe pain of myocardial infarction (heart attack). A myocardial infarction is almost always due to one of the coronary arteries (the arteries which supply the heart muscle) being blocked by a thrombus (clot) forming at the site of an atheromatous plaque. The main conditions of these features are that

1. they are a result of the underlying disease of atherosclerosis, atheroma or arteriosclerosis and do not, in themselves, constitute personal injury
2. they may be worsened temporarily when the normal activity of the heart is increased by
 - 2.1 bodily exertion **or**
 - 2.2 mental or nervous stimulation

3. if heavy exertion or severe mental or nervous stimulation is involved, a myocardial infarction, which may have complications such as arrhythmias (irregular heart beat), and which may be fatal
4. where 3. applies death is likely to be certified as due to acute coronary insufficiency, acute cardiac ischaemia or acute heart failure.

66127 The case should be allowed where

1. a severe strain or effort of a heavy nature has contributed to the attack **and**
2. the strain or effort has arisen out of and in the course of employment.

Angina of effort, angina pectoris, angina

66128 These terms have the same meaning. They describe the pain which comes on with exertion and is relieved by rest. There is temporary myocardial ischaemia which occurs whenever there is an imbalance between the oxygen supply required by the heart muscles and the coronary arteries ability to deliver an adequate supply of blood needed to supply that oxygen. The DM should note that

1. although effort may bring on an attack, the attack is usually a symptom of underlying coronary artery disease (usually arteriosclerosis) causing the arteries to be narrowed and inflexible
2. the underlying condition is likely to cause further attacks of angina
3. an attack passes off when the demand for blood is reduced, for example after a short rest, or on administration of treatment, for example glyceryl trinitrate and does not cause any pathological change
4. where 3. applies
 - 4.1 angina does not constitute an IA as there is no personal injury **and**
 - 4.2 any subsequent incapacity from the same cause
 - 4.2.a is due to the underlying condition **and**
 - 4.2.b is not due to the incident which triggered the attack¹.

1 R(I) 1/55; R(I) 22/59

66129 The pain experienced in angina is similar in nature and distribution to that in myocardial infarction, but in the latter it is more severe, persists at rest and does not respond to glyceryl trinitrate. Thus the first onset of pain may be a symptom of myocardial infarction as opposed to an angina attack.

Coronary, coronary thrombosis, coronary occlusion, myocardial infarction

- 66130 A myocardial infarction is almost always due to one of the coronary arteries (the arteries which supply the heart muscle) being blocked partially or totally by a thrombus (clot) forming at the site of an atheromatous plaque. Thus there is an underlying defect in the coronary artery involved making it narrow and inflexible and partially occluded.
- 66131 The result of the blockage is that the blood supply to part of the heart muscle is reduced or cut off, resulting in a myocardial infarction (also referred to as a coronary thrombosis, thrombosis, heart attack, coronary).
- 66132 The development of atheromatous plaques in the arteries and thrombus formation at the site of a plaque is a pathological change which is due to constitutional factors for example smoking, poor diet, and familial reasons.
- 66133 The question whether it is more likely that the person's activity at work contributed to the thrombus development at a particular time and not to another cause depends on the
1. nature of the work **and**
 2. time at which the thrombosis occurred **and**
 3. person's previous state of health.

An infarction may be related to a person's work activity where the effort is exceptional for the person concerned¹.

1 R(I) 12/68

- 66134 The DM is advised to accept a causal connection between the person's employment and heart condition if the medical adviser is satisfied that there is evidence of a thrombosis or infarction having occurred within a few hours of heavy physical effort at work.

Strokes, cerebrovascular accidents (CVA)

- 66135 Damage to the brain tissue occurs either due to cerebral infarction e.g. due to arteriosclerosis, or an embolus (clot) or haemorrhage e.g. from a faulty blood vessel or from trauma.
- 66136 The underlying pathological change is usually constitutional. There must be clear evidence that the claimant's employment caused or materially contributed to the stroke before accepting an accident.

Exposure to sensitizing agents

General

- 66137 Claims for conditions resulting from a wide range of substances may cause problems. In some cases a person will have become sensitized, that is made sensitive to the relevant substance. Sensitization may
1. occur gradually over a period of months or years of exposure to accepted safe levels of concentration when the individual will not display any symptoms
or
 2. develop over a shorter period of time **or**
 3. exceptionally result from a single and usually massive exposure.
- 66138 On further exposure to even minute quantities of the relevant substance (the allergen or antigen) or other allergens the sensitized person is likely to show signs of an allergic reaction. Such a reaction normally occurs immediately upon further exposure but the effects can be delayed for up to about 48 hours. Usually the symptoms clear up rapidly when the person is removed from contact with the agent but they are likely to recur on re-exposure, even after a lengthy interval. In some cases of repeated re-exposure more permanent tissue damage may result. Medical advice on whether the substance specified is a sensitizing agent will normally be needed before a decision is made.
- 66139 The reaction suffered by a sensitized person may take the form of
1. asthma - the airways in the lungs narrow causing symptoms of respiratory distress e.g. wheezing, coughing, tightness in the chest
 2. rhinitis - congestion and watering of the upper respiratory tract (the nose and throat) often associated with smarting and watering of the eyes
 3. dermatitis, eczema or urticaria.
- 66140 Claims following a single massive exposure at work are usually straightforward. This is because the incident itself would probably constitute an IA from which personal injury may follow by way of
1. sensitization **or**
 2. irritation **or**
 3. acute respiratory distress.
- 66141 When sensitization has developed over a period of time the DM should note that
1. the evidence will normally show that sensitization has been due to process rather than to an identifiable incident or incidents
 2. once a person has become sensitized, an acute reaction following a further exposure at work to a sensitizing agent or allergen may constitute an IA

3. in this situation where the injury is the accident, a favourable decision does not depend on there having been any unusual concentration of the substance because it is enough if there was exposure which is likely, on balance of probability, to have resulted in the attack
4. in a few instances the substance causing the allergic reaction may not be the one to which the claimant had become sensitized, for example a latex allergy may cause an allergy to avocados and bananas.

66142 When a reaction occurs following exposure at work and there is no undue delay in the onset of symptoms, the DM should accept that reaction as an IA.

66143 A claim for a single massive accidental exposure in the 48 hours before the onset of incapacity should not cause difficulties as the incident itself probably constitutes an IA in which there has been personal injury (including sensitization in many cases) suffered. If there has not been a single massive accidental exposure, the DM should establish whether

1. sensitization is confirmed
2. there is satisfactory evidence that an appropriate condition has been diagnosed **and**
3. there has been exposure to the substance at work within the preceding 48 hours.

66144 The basis of a claim is often unclear because of the absence of any clear cut incident (other than the onset of symptoms, which could be attributable to constitutional causes). The DM should ensure that adequate guidance (see DMG 66096) is given to those responsible for making enquiries.

Deciding claims

66145 In claims based on exposure to sensitizing agents the DM should note that

1. claimants are not normally aware that they have become sensitized **and**
2. the claim will be for compensation for this sensitization rather than for any continuing disability due to a specific incident of acute reaction **and**
3. as sensitization is not itself the IA in most cases, it does not form part of the relevant loss of faculty.

66146 If the claim relates to an already accepted IA, the DM should take action in the normal way describing the accident as in DMG 66148. But claims will also be received where the IA question is still under investigation. In these cases the DM should always consider the basis on which the claim is made and if the claim clearly relates to the sensitization, it may be appropriate to disallow on the grounds that there has been no accident.

66147 At most only a small assessment is given for the residual effects of an acute reactive attack. Where a change of occupation is necessary to avoid further exposure and the risk of reactive attacks a claim for REA may also be made.

Favourable accident decision

66148 When recording a favourable decision, the DM should add the following description
“Acute respiratory symptoms in an already sensitized individual following exposure to ... on ...”

to show that a clear distinction has been drawn between the acute reaction and the underlying sensitivity.

66149 Exposure to certain allergens brings the claimant within the scope of the PD provisions (see DMG Chapter 67).

Back conditions, including prolapsed intervertebral disc (PID)

General

66150 Back injury may arise from conditions unrelated to degeneration of the spine, for example muscular strain. In these cases DMs should consider that an account of pain not related to any particular time or causative feature may simply indicate that the claimant has experienced a symptom of a constitutional complaint with no fresh pathological change. In back injury cases claimants may

1. be sure they have suffered a pathological change as a result of some employment activity **but**
2. have simply experienced pain whilst at work arising from constitutional causes.

Back problems

66151 Back pain is very common, 60 - 70% of the population experience back pain at some time in their working life. In only approximately 15% can a definite pathological diagnosis be made. Back pain can be split into

1. simple backache (see DMG 66152) **or**
2. nerve root pain (sciatica) (see DMG 66153) **or**
3. serious spinal pathology (see DMG 66154).

- 66152 Simple backache is common, non-specific low back pain related to mechanical strain or dysfunction. The pain may spread to the buttocks or thighs. There is no serious spinal pathology or damage to the nerves.
- 66153 Nerve root pain (sciatica) can arise from a disc prolapse, spinal stenosis or surgical scarring. It takes considerable force to prolapse a disc. Nerve root pain usually stems from a single nerve and therefore pain is localised down the leg in an area which is served by that nerve. The pain is felt below the knee and often into the foot or toes. There may be pins and needles or numbness in the same area. Often the symptoms in the leg are greater than those complained of in the back. Examination may reveal nerve irritation signs e.g. reduced straight leg raising (SLR) reproduces the leg pain.
- 66154 Serious spinal pathology includes tumours either arising in the spine or secondary to a tumour elsewhere, infection, inflammatory disease (e.g. ankylosing spondylitis). Serious spinal pathology accounts for less than 1% of all back problems.
- 66155 In addition, occasionally back pain may arise from abdominal or pelvic organs and also can be due to generalised disease such as rheumatoid arthritis. Most findings on X-rays bear little relationship to the clinical symptoms, and are equally common to symptomatic and asymptomatic people. Back pain is usually due to conditions that cannot be visualised on X-rays. The degenerative changes that do show on X-rays are normal, age-related features. CT and MRI scans, although more sensitive, add little to the diagnosis and management of the patient. Pain is the main presenting symptom. However the presence of pain, which in any case is subjective, does not equate to disability.
- 66156 The DM should note that
1. the back is very liable to degeneration because of its complicated structure and the strain of supporting the body in an upright position
 2. conditions resulting from degeneration are not necessarily related to a particular age group and may occur at any time of their own accord
 3. because of the difficulty of precise diagnosis, especially in the early stages of incapacity, the claimant's condition may not always be described accurately on medical statements
 4. the majority of people with acute back pain make a spontaneous recovery with no significant ensuing problems and only a small minority continue to experience pain and disability.

Prolapsed intervertebral disc (PID)

66157 PIDs occur where¹

1. there is a sudden prolapse (a slip downwards or out of place) which occurs even though the person's intervertebral discs are healthy
2. the discs are degenerative (although the person may be unaware of this) and there is a sudden spasm of pain that is just the progress of degeneration to a stage where the symptoms are making themselves felt
3. the discs are degenerative (again possibly unknown to the person) and the prolapse is linked with an action or movement at work, usually marked by a sudden and continuing pain.

Note 1: For the purposes of **1.** this type of case involves considerable violence and the DM will usually be able to decide from the degree of violence that an IA has taken place with related personal injury.

Note 2: For the purposes of **2.** there will be no obvious link between the onset of the condition and the employment activity on which the claimant was engaged at the time.

Note 3: For the purposes of **3.** the DM should consider whether the action related to the onset of symptoms is sufficiently marked to show that the employment has played a material part and the prolapse is not simply due to a normal everyday movement which merely coincides with the fact that the claimant is at work.

1 R(I) 19/63

66158 The phrase "normal everyday movement" should not be interpreted rigidly and the DM should bear in mind that

1. the phrase implies only those slight movements of the back forming an essential part of day to day activities such as standing, sitting, walking and turning
2. it does not cover bending, lifting, twisting and stretching or other movements which bend or strain the back and this applies even though these movements could occur as part of the claimant's activities in and out of work
3. for the claim to succeed any causative movement must be something required of the claimant as part of the employment, or reasonably incidental to the employment.

Further enquiries required

66159 The DM should arrange for enquiries to be made if the claim cannot be determined on the information held. The following points may be covered. They are not a

statement of what must be satisfied before the claim can succeed. They should be expanded or reduced as required. These points are

1. the person's work and the DM may consider
 - 1.1 a description of the nature of the person's normal work
 - 1.2 the amount and frequency of the physical exertion normally required
 - 1.3 the length of time the occupation has been followed
 - 1.4 whether the claimant was doing normal work on the day in question, with details of the particular job the claimant was doing at the time of the incident
2. the incident (or onset of symptoms) and the DM may consider
 - 2.1 what the incident was, what happened, and where
 - 2.2 if objects were being lifted or moved, their size, shape and weight, the distance or height they were being moved, and in what manner
 - 2.3 in what way, if any, the person had to exert more effort than usual
 - 2.4 whether the work was in a confined space, and details of any effect this had
 - 2.5 whether there were any external factors such as weather conditions, or an emergency, which had any effect on the degree of exertion involved
3. the symptoms and the DM may consider
 - 3.1 the nature of the symptoms felt and how long they continued
 - 3.2 whether the onset of pain was sudden or gradual, and its location in the body
 - 3.3 the person's description of it such as "stabbing pain", "dull ache"
 - 3.4 when the pain was first felt and if this was not immediate what was the claimant doing at or shortly before the onset of pain
 - 3.5 whether further symptoms were subsequently experienced and, if so, at what intervals, and whether they differed in any way from those at the time of the incident
 - 3.6 whether similar symptoms had been experienced before with details, where appropriate
4. sequence of events after the incident and the DM may consider
 - 4.1 whether the person continued normal work for the rest of the day, immediately or after an interval
 - 4.2 the circumstances in which the claimant continued to work between the incident and the date on which incapacity commenced
 - 4.3 details of any first aid or medical attention received.

66160 The DM should also consider whether evidence is needed on any of the non medical factors of the claim, for example about the “arising out of” condition. The DM should consider whether to request statements from any known witnesses.

66161 The DM should allow the claim where

1. the claimant is suffering from a condition with possible traumatic origins, for example back injury, back strain, low back pain, lumbago, sciatica, sacroiliac strain, prolapsed disc, slipped disc, prolapsed intervertebral disc, coccydynia, cervical lesion, back syndrome, prolapsed intervertebral disc syndrome **and**
2. there was either
 - 2.1 an obvious accident in the popular sense of the word, for example the impact of a heavy object on the person's back or a fall from a ladder **or**
 - 2.2 the person was engaged in an employment activity causing obvious stress or strain of the back, such as bending, twisting or lifting **and**
3. some symptoms, however short lived, were experienced at the time or shortly afterwards. Immediate pain can recede quickly only to be replaced by more prolonged pain later.

Note 1: If the claimant cannot show that there was an obvious accident or prove that the condition was partly or wholly caused or materially worsened by the work done at the time of onset, the DM should disallow the claim.

Note 2: The DM should not allow cases involving spondylosis, spondylitis or fibrositis without further enquiry as in DMG 66159, seeking medical advice if appropriate (see DMG 66116 to 66119).

66162 The DM should decide that the accident materially contributes to the cause of incapacity if incapacity for work starts

1. on the day of the accident **or**
2. the next day.

Even if there is a long break between the date of accident and the start of a period of incapacity for work the claim should not necessarily fail. For example the evidence may indicate that the claimant continued to work despite resultant discomfort or other effects or was receiving interim treatment.

Hernias

66163 A hernia is an abnormal protrusion of part of an organ through the structure enclosing it. Depending on its location it may be described as

1. inguinal
2. femoral
3. umbilical
4. hiatus

5. epigastric.

Inguinal hernia

66164 An inguinal hernia is the most common form of hernia. It is the name given to the protrusion of a portion of the abdominal contents into the inguinal canal through a weakness in the anterior abdominal wall. There can be

1. an indirect (see DMG 66165) **or**
2. a direct (see DMG 66166)

type of inguinal hernia.

66165 The indirect type of inguinal hernia is normally the result of a failure of the sealing off process of the anterior abdominal wall at birth, leaving a congenital weakness and a ready made sac into which abdominal contents can pass.

66166 The direct type of inguinal hernia protrudes through an acquired weakness in the abdominal wall directly into the inguinal canal.

66167 In either type of inguinal hernia any strain which causes a sudden increase in intra abdominal pressure may cause a

1. hernia by forcing abdominal contents through the weakness in the abdominal wall **or**
2. material increase in size of a pre existing hernia requiring surgical treatment which may not have been considered necessary before the strain.

Femoral hernia

66168 The femoral canal, through which a femoral hernia is squeezed, is next to the point where the blood vessels and nerves pass from the abdomen into the leg. It is a potential weak spot in the abdominal wall. Intestine (bowel), or the tissue that covers it, is more likely to be forced out through the femoral canal if a weakness already exists. DMs should note that femoral herniae

1. are the third most common type of groin hernia after direct and indirect inguinal hernias
2. occur four times more commonly in women than men
3. are twice as common on the right than the left side.

66169 Femoral hernias tend to occur in older people. Pregnancy may also weaken the abdominal tissues, making femoral hernias more common in women who have had one or more pregnancies. Causes of femoral hernias include

1. increasing the pressure inside the abdomen due to, for example
 - 1.1 chronic cough **or**

- 1.2 constipation **or**
- 1.3 carrying or pushing heavy loads **or**
- 1.4 being obese **or**
- 1.5 gastrointestinal obstruction **or**
- 1.6 pregnancy
- 2. laxity or weakness of tissue caused by, for example
 - 2.1 pregnancy **or**
 - 2.2 rapid weight loss **or**
 - 2.3 previous inguinal or femoral hernia repair.

Umbilical hernia

66170 This is a less common type of hernia. The DM should note that

- 1. it can be caused in a similar way to the direct and indirect inguinal herniae
- 2. as a result of increased intra abdominal pressure the hernia protrudes through
 - 2.1 a congenital weakness in the umbilical ring **or**
 - 2.2 an acquired weakness in the area around it
- 3. where 2. applies the DM can accept the initiation or aggravation of the hernia as personal injury by accident
- 4. an umbilical hernia can be worsened by a succession of strains over a period of weeks, each strain causing
 - 4.1 a minute widening of the tear in the muscular wall **or**
 - 4.2 a further minute protrusion of the bowel
- 5. where 4. applies the claimant may feel no pain and may not know for a month or two that a hernia has developed¹.

1 R(I) 19/63

Hiatus hernia

66171 A hiatus hernia is a protrusion of abdominal contents through a weak area of the diaphragm into the thoracic cavity. The DM should note that

- 1. it may be present for several years without symptoms
- 2. it is rarely due to a single lifting strain though it often results from a crush injury
- 3. the pain linked with the condition is usually due to the backward flow of acid stomach contents into the oesophagus

4. the pain may be caused or aggravated by bending forward with the head below the level of the hips.

Epigastric hernia

66172 The epigastric hernia is unusual because

1. it may be a fatty protrusion within the abdominal wall itself **and**
2. it takes the form simply of a fatty tumour **and**
3. it is possible for it to become a true hernia if it enlarges and drags a pouch of peritoneum (the membrane lining the abdominal cavity) after it.

Note: It is not a true hernia. Strain plays no part in causing it¹. But some doctors think that physical effort and strain can play some part in causing or aggravating this type of hernia.

1 R(I) 34/56

Claims as a result of a hernia

66173 The DM may experience problems where incapacity occurs some time after the alleged accident because

1. the claimant may notice a lump in the groin, and a doctor may confirm a hernia
2. though the hernia may have been caused by an incident at work, there is no incapacity, and no claim for benefit until
 - 2.1 the hernia gives further trouble **or**
 - 2.2 the claimant is admitted to hospital for surgery
3. where 2. applies it may appear that the claimant has searched for an event (see DMG 66048) unless
 - 3.1 the incident at work was properly reported and recorded at the time **or**
 - 3.2 the claimant had applied for an accident declaration.

This makes it more difficult for a claimant to prove industrial causation for the condition.

66174 The “personal injury by accident” condition should be accepted without further enquiry if the DM is satisfied that

1. the personal injury is described in the medical evidence as inguinal hernia, whether direct or indirect **and**
2. there is a well authenticated incident involving abdominal strain (for example, lifting a heavy object) so that the date of injury can be established **and**
3. the onset of pain was immediate **and**

- 4.** incapacity commenced either
 - 4.1** within seven days **or**
 - 4.2** more than seven days after the alleged accident (for example, on admission to hospital), but it can be shown that the claimant
 - 4.2.a** was receiving medical treatment for the hernia in the interim from a GP, or hospital as an out patient **or**
 - 4.2.b** was employed on lighter work as a result of the alleged injury **or**
 - 4.2.c** became aware of a hernia within seven days of the alleged accident.

Tennis elbow

66175 The main features of tennis elbow are

1. it is a group of several distinct conditions involving pain in the elbow and upper forearm area **and**
2. it is constitutional in origin and the underlying pathology is degeneration **and**
3. symptoms may be triggered or the condition worsened, by prolonged and constant exercise of the arm, especially movements needing a firm grip and repeated twisting of the forearm and wrist, as in wringing clothes and
4. in rare cases the condition can occur suddenly following
 - 4.1 a violent strain of the forearm muscles (for example after striking a heavy blow with a hammer) **or**
 - 4.2 a direct blow on the elbow, particularly if over the common extensor tendon.

66176 The effects of tennis elbow are that

1. tenderness and pain extending from the outer side of the elbow to the forearm to cause widespread aching **and**
2. the ability to perform lifting movements (especially with the palm facing downwards) is impaired **and**
3. there may be a swelling on the outer side of the elbow if the condition occurs suddenly following a violent strain of the forearm muscles.

66177 Tennis elbow is **not** a PD and should be distinguished from PD A7 (beat elbow) (see DMG 66178) and from PD A8 (traumatic inflammation of the tendons of the hand or forearm, or of the associated tendon sheaths) (see DMG 66179).

66178 The symptoms of PD A7 are pain, redness, swelling and tenderness over the back of the elbow due to an infection of the skin and tissues immediately beneath it. An abscess may occur.

66179 PD A8 is caused by an inflammation due to injury of the tendons and their sheaths in the lower part of the forearm, wrist and hand. The signs are pain, swelling and tenderness in the area affected. The person may also feel a creaking sensation when moving the tendons.

66180 Claimants will almost certainly base their claims on an incident at work. Before deciding whether the claimant suffered injury by accident or process the DM should ensure that there is adequate information about

1. the claimant's work **and**
2. the symptoms experienced **and**
3. any incident or incidents said to be responsible for the condition.

The DM should seek medical advice if necessary.

Disease

General

66181 Accident claims based on diseases alleged to have been contracted at work should be investigated carefully. This is because the disease's origin in many cases may be constitutional rather than occupational. DMG 66182 et seq gives guidance on these cases. Diseases which claimants allege were contracted by accident at work and which are also PDs are covered in DMG 66055 - 66058.

66182 When deciding if a disease constitutes personal injury by accident the DM should note that

1. a disease may constitute personal injury if
 - 1.1 it occurs as a sudden pathological change due to a person's activity at work **or**
 - 1.2 is caused by accidental infection at work on a particular occasion or occasions¹
2. if a disease has developed gradually over a long period, that is by process (see DMG 66089), it does not normally satisfy the IA condition unless
 - 2.1 the disease is aggravated **or**
 - 2.2 another condition affects the diseased area of the body because of infection at work².

Note: To succeed with a claim the claimant must show that the "arising out of" condition is satisfied. This means that a causal connection has to be proved between the employment and the accidental contraction or aggravation of the disease³.

1 CI 211/49(KL); 2 R(I) 71/51; R(I) 75/51; 3 R(I) 43/60

Infectious disease carriers or contacts

66183 A person who is excluded from work by a medical officer for environmental health due to being a carrier or having been in contact with an infectious disease may in certain circumstances be deemed incapable of work. But a person who has simply been in contact with the disease without contracting it has not suffered a pathological change and cannot establish that an IA has taken place.

66184 In certain cases the DM may treat a carrier of a disease as having suffered a pathological change, and therefore personal injury, even though there may have been no obvious symptoms of the disease. Before accepting an IA the DM

1. must be satisfied that the person has
 - 1.1 become infected through work **and**
 - 1.2 not caught the infection outside work (and then infected others) **and**
2. should consider such factors as
 - 2.1 recent visits to foreign countries **or**
 - 2.2 outbreaks in the carrier's household

before deciding the case on the balance of probabilities.

66185 The carrier state is not uncommon. Many people are asymptomatic carriers of disease (i.e. there is no illness or disability). For example

1. very many people carry the meningitis bacteria in their nose and throat, and, whilst they can infect other people, do not have the disease itself
2. the salmonella bacteria may be carried in the bowel, and whilst the person has no symptoms, they can pass the bacteria to another person who may become ill
3. the causative organisms of dysentery, diphtheria, typhoid, polio, hepatitis and very many other diseases can all be carried by perfectly healthy people
4. a person may carry an abnormal gene, and have no other symptoms of the disease yet is capable of passing the disease to their offspring.

66186 The carrier of a disease may have suffered from a clinical presentation of the disease, or may have been in contact with the disease yet never suffered from the disease, but harbour the causative organism in their body. The carrier state does not cause any disability in the carrier.

66187 - 66190

Epidermophytosis (athlete's foot, ringworm of the feet tinea pedis, dermatophyte infection)

66191 These are fungal infections of the skin and nails and are common in the community. They are often contracted at swimming baths. The incubation period is one week (see DMG 66230). The fungi may persist indefinitely and cause intermittent exacerbations and remissions.

66192 The DM can accept that an initial infection of the disease constitutes personal injury by accident¹ where the use of baths provided at a claimant's place of work is a regular and recognised incident of the employment, for example in pithead baths.

1 CI 211/94 (KL)

66193 The employer's answer on form BI76E should normally allow the DM to determine a first claim for the condition. When determining the date of the accident the DM should

1. generally accept that the infection was contracted seven days before the first day of incapacity (if any), provided there is an indication that the claimant used the baths on that day
2. if the date the claimant last used the baths was earlier, but not more than three weeks before the initial onset of the condition, accept that date as the date of the accident.

66194 When considering whether a subsequent attack is due to a fresh accident DMs should note that

1. once the spores of the fungus have obtained a hold in the foot or hand, they can lie dormant there for years without the claimant being aware of the fact but they may then become active again without any external stimulus
2. a further attack of the condition may be due either to a dormant fungus becoming active again or to a fresh infection from the outside
3. where 2. applies, the onus is on the claimant to show that there has been a fresh accident rather than a relapse of the condition caused by the original infection which has already been accepted as an IA¹
4. they should generally treat the claimant's current condition as a relapse, particularly if there is a current assessment of disablement because of the disease
5. if it is claimed that there has been a fresh accident, they should
 - 5.1 establish the extent to which the claimant used the baths and the claimant's condition during the intervening period if it is not clear from the papers **and**
 - 5.2 decide the issue on the balance of probability obtaining any medical advice that is considered necessary.

1 R(I) 8/66

66195 If the accident question arises on a claim for IIDB with no preceding incapacity, the DM should generally accept that the claimant is suffering from epidermophytosis as claimed. The DM must establish the period the claimant has suffered from the disease in order to determine whether it is due to work and, if so, from what date.

- 66196 In determining the period as in DMG 66195 DMs should note that
1. if it is claimed that initial onset of the condition has been recent they should apply DMG 66193.
 2. if it is claimed that the condition has been long standing, they should generally decide that there was only one original infection with, where appropriate, subsequent relapses unless the claimant contends otherwise (see DMG 66194).
 3. they must take particular care with cases where the claimant alleges there was a fresh infection on a later occasion of industrial contact and the claimant's employment history casts doubts on the claim that the original infection was by IA.

66197 - 66200

Tuberculosis by infection

66201 Despite the simplification in occupational coverage for tuberculosis as a PD from 3.10.83¹ the DM may occasionally need to consider if the infection by tuberculosis is a personal injury by accident. Tuberculosis may be caused by

1. a cumulative process of infection **or**
2. exposure on one or more specific occasions to a potential source of infection.

In deciding such claims the DM has to decide whether accident or process is involved (see DMG 66089) and may need to refer the case for medical advice.

1 SS II (PD) Regs, Sch 4

66202 For a claim to succeed on the accident provisions the claimant must show on balance of probability that an incident or series of incidents of an accidental nature

1. caused **or**
2. materially contributed

to the origin or progress of the disease¹.

Note: This principle, established in cases prior to the prescription of the disease for certain employed earners, remains valid².

1 CI 83/50(KL); CI 196/50(KL); 2 R(I) 12/57

66203 When considering whether the claimant has shown that the incident claimed caused or materially contributed to the disease, DMs should bear in mind that

1. although there are relatively few open cases of pulmonary tuberculosis, the number of cases in the community is increasing

2. it is more likely that the disease was contracted at work rather than from some unknown source in the general population if
 - 2.1 a claimant contracts the disease after having been in contact with a known open case at work **and**
 - 2.2 there is no other known source of infection, for example in the claimant's family
3. in all cases they must establish that the lapse of time between possible infection and appearance of the symptoms is reasonable i.e. not less than about six weeks¹.

1 R(I) 30/55

66204

Brucellosis by accident (undulant, Malta, Mediterranean, or Gibraltar fever)

66205 Brucellosis is a disease caused by brucella organisms and is characterised by an acute febrile stage with few or no localising signs and a chronic stage with relapses of fever, weakness, sweats, and vague aches and pains. The causative micro-organisms of human brucellosis are *Brucella abortus* (cattle), *B. Melitensis* (sheep and goats), *B. Suis* (pigs) and *B. Canis* (dogs). *Brucella* infections of deer, bison, horses, moose, hares, chickens and desert rats have also been reported.

66206 It is acquired by direct contact with secretions and excretions of infected animals and by ingesting raw milk or the products of milk containing viable *Brucella* organisms. It is rarely transmitted from person to person. The incubation period varies from five days to several months and averages two weeks.

66207 Infection by brucella is a PD. But there may be cases where a person whose occupation is not prescribed for brucellosis claims to have contracted the disease because of the employment followed. The DM may allow an IA if satisfied that the disease was caused by contact with a source of infection at work.

66208 In deciding whether the probable cause of the disease was contact with a source of infection at work or an event unconnected with work such as drinking raw milk at home, DMs should bear in mind that

1. if the claimant contends that the disease was contracted by drinking unpasteurised milk or milk products, it must be shown on balance of probability that the untreated products causing the infection were provided by the employer at the place of work
2. in most cases the claimant will be unable to satisfy 1. if there is evidence that the claimant also consumed such untreated products outside the place of work

3. before seeking medical advice they must obtain as much evidence as possible about
 - 3.1 the alleged source of contact with the disease **and**
 - 3.2 if appropriate, the likelihood of the claimant's consumption of untreated milk products outside the employment.

66209 - 66220

Date of accident

66221 It is important to identify the date of an accident because an accident is not an IA if the injured person is not then in employed earner's employment.

Note: For claims made before 5.12.12, an accident happening before 5.7.48 cannot be accepted as an IA. However, for claims made from 5.12.12 the date 5.7.48 is no longer of relevance¹.

1 WR Act 12, s 64(1); SS CB Act 92, s 94(1)

66222 The DM should consider DMG 66223 - 66229 when deciding the date of an accident.

66223 If the date of the accident is in doubt, the DM should decide the date on the balance of probabilities, that is the DM should fix the date as that most probable on the evidence.

66224 Uncertainty about the exact date does not prevent an accident being accepted as an IA if the evidence shows with reasonable certainty that

1. for claims made before 5.12.12, it happened on or after 5.7.48 **and**
2. it happened while the injured person was in employed earner's employment.

66225 Where the injury was caused by a series of identifiable incidents, for example a series of small cuts, abrasions or strains, the DM should take the date of the accident as

1. the date of the incident likely to have contributed most to the injury, for example
 - 1.1 the most severe incident in the series **or**
 - 1.2 an incident after which symptoms were particularly noticed **or**
2. if there is no incident as in 1. the date of the last incident in the series¹.

1 R(I) 77/51

66226 Where the injury by accident is an infection, the DM should fix the date of the accident as the date of contact with the source of infection.

66227 Where there has been contact over a period and DMs cannot attribute infection to a particular contact, they should fix the earliest date of the period of contact as the date of accident.

66228 In some cases in DMG 66227 the DM will need to ensure that the period between the

1. accepted date of accident **and**
2. date of manifestation of a disease

is at least within the generally accepted period of incubation for that disease.

66229 Where DMG 66228 applies the DM should take as the date of accident the earliest date of contact within the maximum period of incubation for the disease.

Period of incubation

66230 The following periods of incubation for certain diseases have been specified by case law

Disease	Period of incubation
1. Epidermophytosis	1 week ¹
2. Infected wart	8 to 9 weeks ²
3. Cattle ringworm	2 weeks ³
4. Poliomyelitis (infantile paralysis)	2 to 7 days ⁴
5. Tuberculosis (accident)	4 to 6 weeks ⁵
6. Typhoid fever	2 weeks ⁶

*1 CI 25/49(KL); CI 211/49(KL); 2 CI 5/49(KL); 3 CI 46/49(KL); 4 CI 159/50(KL);
5 CI 196/50 (KL); 6 CI 401/50(KL)*

Changing the accepted date of accident

66231 The date an accident occurred is not part of the decision whether an incident was an IA but is secondary to that decision.

66232 The onus for establishing grounds for revision or supersession is on the person seeking to overturn the original decision¹. But if the DM is satisfied that in deciding the date of the accident the DM was ignorant or mistaken about some material fact the DM may revise or supersede the date of the accident².

Note: See DMG Chapter 03 for guidance on revision and DMG Chapter 04 for guidance on supersession.

1 R(I) 1/71; 2 SS CS (D&A) Regs, reg 3(5)(b) & 6(2)(b)(i)

66233 - 66300

Arising out of and in the course of the employment

Introduction

66301 Before accepting an accident as an IA the DM must be satisfied that it arose

1. out of **and**
2. in the course of

the injured person's employed earner's employment¹ (see DMG 66061 et seq).

1 SS Act 98, s 29(6)(b)

66302 When deciding whether a person was in the course of employment when an accident happened, the DM should consider

1. when the accident occurred **and**
2. where the accident occurred **and**
3. what the person was doing at the time.

The answer to **3.** often answers the question "Did the accident arise out of the employment?" It is usually convenient to consider whether the accident arose in the course of the employment first.

66303 The employer's reply usually answers all three questions in DMG 66302. In most cases those replies will enable the DM to give a decision without further enquiry. For instance there is no doubt that an accident arose in the course of employment if it is shown clearly that it took place

1. during the person's normal working hours **and**
2. on the employer's premises **and**
3. whilst the person was doing something they were clearly employed to do.

Also, if it occurred while a person was doing something they were employed to do, there will in most cases be no doubt that the accident "arose out of" the employment.

66304 In some cases the DM will need to consider in detail the question of whether the accident arose out of the employment, even though the person was

1. within normal working hours **and**
2. on the employer's premises **and**
3. doing something they were employed to do

when the accident occurred.

66305

66306 The DM should note that an accident not satisfying DMG 66303 is not necessarily outside the course of employment. For example it may be appropriate to accept people as in the course of their employment even where they

1. may have been working
 - 1.1 outside their normal working hours **and**
 - 1.2 away from the employer's premises **or**
2. have
 - 2.1 not started **or**
 - 2.2 finishedthe actual work they were employed to do **or**
3. they may even have been doing something which
 - 3.1 had no direct link with the work they were employed to do **or**
 - 3.2 was contrary to instructions given or rules laid down by their employer.

66307 The DM should bear in mind, however, that a decision that an accident arose in the course of the employment does not automatically mean that the accident also arose "out of" the person's employment. For example some acts

1. which are not part of the work a person is employed to do but are closely enough linked with the performance of that work to be regarded as a natural extension of it can be regarded as arising "out of" the employment
2. may not take the claimant outside the course of employment but have no connection with the work so that an accident occurring in the performance of such an act does not arise "out of" the claimant's employment.

66308 DMG 66309 et seq gives guidance on some of the more common situations arising where there are no clear cut answers to the questions of whether an accident arose

1. in the course of **and**
2. out of

the employment.

Note: The cases described and guidance have been taken from case law. But the guidance does no more than provide pointers to the approach which may be appropriate in a particular case.

66309 It is rare for two cases to be identical. The DM may legitimately decide that different weight should be given to certain aspects of the case under consideration compared with similar aspects in case law.

66310 It is important to look at the facts as a whole "...none of the authorities [earlier decisions of the Courts on other cases] purports to lay down any conclusive test and none propounds any proposition of law which, as such, binds other courts. They do indeed approve an approach, which requires the court to have regard to and to weigh in the balance every factor which can be said in any way to point towards or away from a finding that the claimant was in the course of his employment"¹.

1 R(I) 7/85, Appendix

66311 The Court went on to say that those who are responsible for making decisions must

1. have regard to previous decisions so that there is consistency and justice between claimants
2. reach the majority of decisions applying the guidelines in previous decisions.

But they are only guidelines. The decisions must stand or fall on the correctness of the appreciation of the particular facts and their inter-relation.

66312 - 66320

General principles

66321 An accident "arising out of and in the course of" a person's employment is one which arises while that person is within the scope or bounds of work¹.

1 R(I) 67/52

66322 The criteria for deciding this question have changed since the days of legislation concerning WC¹. An accident can now be accepted as arising out of and in the course of the employment if the person is doing something which is reasonably incidental to their employment (even though they may have been doing it for purposes of their own)² (see DMG 66425 et seq).

1 Workmen's Compensation Acts; 2 R(I) 4/66

66323 An accident can arise "out of" a person's employment but not "in the course of" it. In order to decide whether an accident arose "in the course of" employment, the DM should consider

1. what the claimant's contractual duties were **and**
2. whether what the claimant was doing at the time the accident occurred constituted the discharge of a duty or something reasonably incidental to it¹.

1 R(I) 8/94; R(I) 1/99

66324 An accident does **not** arise "in the course of" employment where a person is the victim of a work related assault while on sick leave¹.

1 R(I) 1/99

66325

Limits of employment in time and place

66326 Most employees' contracts of service require them to work at particular places and within specified hours. When employees carry out duties within the terms of their contract of service they are doing so in the course of employment. Doubt may arise whether the claimant is within the scope of employment in terms of time or place. DMG 66327 - 66389 gives guidance on some of the situations which may arise.

Duties not started

66327 When considering the scope of employment where duties have not started the DM should note that

1. when a person's application for employment has been accepted, the employer-employee relationship exists even though the person has not started on the duties
2. an accident happening to a person who is completing forms relevant to employment, on the employer's premises after the employer had accepted the application for employment at interview, is an IA because the claimant is involved in duties reasonably incidental to the employment¹
3. a mariner permitted to live on board ship rather than find lodgings has not entered the course of employment when returning to the ship in off-duty hours after buying provisions².

1 R(I) 14/60; 2 R(I) 75/53

Time of arrival or departure

66328 The course of employment begins when the employee arrives at the employer's premises. This applies regardless of the hours of attendance expected of the employed person if

1. the claimant does not arrive unreasonably early (as a general rule up to one hour may be taken to be reasonable) **and**
2. the immediate purpose is not to take part in an activity entirely separate from obligations to the employer, for example
 - 2.1 conducting personal business **or**
 - 2.2 taking part in sporting or recreational activities.

66329 The DM should then consider whether there has been the kind of interruption that would take the claimant out of the course of employment. A person who

1. is obliged to arrive early because of infrequent public transport **or**

2. prefers to have a short interval in which to settle down and equip themselves before the day's work begins, perhaps by taking refreshment, or reading a newspaper **or**
3. is clearly "disentangling themselves from their work", for example changing clothes, putting implements away and generally leaving the premises

should normally be regarded as doing something incidental to the employment.

1 R(I) 16/75, Appendix

Example

A factory worker arrived half an hour before her shift began. She put on her overalls and went to the canteen before starting work. She was in the course of employment when she fell in the canteen¹.

66330

Access to and exit from place of work

66331 When considering the sphere of employment in connection with access to and exit from place of work the DM should note that

1. for most people the sphere of employment is clearly defined by a gateway or door marking the dividing line between the employer's premises and a public thoroughfare
2. provided claimants follow the recognized route to the actual place of work after passing the gateway, they have entered the sphere of employment even though work does not start until a reasonable time later
3. if part of the access route, although not a public thoroughfare, is for the common use of persons other than the firm's employees and visitors, that part of the route is not within the sphere of the employment¹
4. a reasonable interval of time and space in going to or returning from the actual place of work may properly be included in the sphere of the employment²
5. if the sphere of a person's employment is extended by physical space, the extension is limited to the boundary of any area including any permitted route of access or exit
 - 5.1 to which the public is not admitted except on business **and**
 - 5.2 in which the person is entitled to be only because of employment³
6. an extension as in 5. does not include every part of the employer's land⁴ but within these limitations, there is no bar as such to the distance from the actual place of work to the point to which the sphere of the employment can be extended

7. in deciding whether a person was in the course of employment when the accident occurred what must also be considered is whether
- 7.1 the person was arriving unreasonably early, or leaving unreasonably late **and**
 - 7.2 the resultant extension of time was for the purpose of work or something incidental to work⁵.

1 R(I) 23/55; 2 R(I) 4/55; 3 R(I) 3/72; 4 R(I) 7/52; 5 R(I) 16/75

66332 - 66335

Shared or public access

66336 Cases may arise where

- 1. parts of the employer's premises are open to use by the employees of other firms or members of the public **or**
- 2. the employer's premises are on a site, for example an industrial park or estate shared by other firms.

The factor determining the point at which the claimant enters the sphere of employment in these cases is whether the premises (or site) are used by persons other than those having business to do there.

Note: In this context the DM should give "business" a wide meaning". It may include members of the public visiting a direct sales outlet, for example a cash and carry store.

Evidence of public use

66337 When deciding whether a place or thoroughfare is open to use by members of the public, other than those who visit it on business, the DM should consider whether

- 1. there is in fact a legal right of way or is access by the public merely tolerated
- 2. there is in fact public access to the place
- 3. there is any barrier to entry and, if so, is it enforced
- 4. the barrier is used to a material extent.

The DM should obtain clear evidence about these factors before giving a decision. The DM should not disallow on the grounds of being outside the sphere of employment if evidence shows that there is little and infrequent public use¹.

1 R(I) 43/51

Docks, wharves and railways

66338 Docks, wharves and railways are examples of places to which the public have access. Claims from dockers, members of ships' crews and railway workers often involve the question of whether there has been public use of the place at which an accident occurred. The DM should refer to the case law¹ before making a decision in these cases.

*1 CI 220/49(KL); R(I) 22/53; R(I)21/54; R(I) 61/54;
R(I)28/55; R(I) 32/58; R(I) 8/60; R(I) 5/67*

66339 - 66340

Construction sites

66341 When considering the sphere of employment at construction sites the DM should note that

1. the point at which a person employed on a construction site enters the sphere of employment depends on the arrangements existing at the site
2. the claimant may be working at a large site where
 - 2.1 a number of contractors are engaged **and**
 - 2.2 the actual place of work may be a considerable distance from the point of access to the site
3. where 2. applies the claimant is unlikely to enter the sphere of employment until reaching the recognized place for reporting for duty¹
4. where the claimant is working at a small site at which the employer is the only contractor it is reasonable to accept that a person entered the sphere of employment as soon as entering the site.

Note: Employees may have interrupted the course of employment if, after entering the course of employment they depart from the direct route to the actual place of work for their own purposes, without the express or implied permission of the employer.

1 R(I) 21/59

66342 - 66344

Resumption of work or return to premises

66345 Employees may resume the course of employment after having ended it for the day by

1. returning to work of their own accord **or**
2. being required to resume the duties of the employment **or**

3. re-entering the area of the employment **or**
4. re-entering the employment when taking steps to protect the employer's property even if it is not kept on the employer's premises¹ **or**
5. resuming the employment at home² when not required to work at any particular time.

Note 1: Where employees decide to return to the place of work or visit another person's office about employment, the course of the employment does not start again until they have reached the place at which they were to work (or access to the place of work).

Note 2: If they were exercising a discretion given by the employer who is prepared to pay for the time³, they are still within the course of employment.

1 R(I) 63/54; 2 R(I) 64/51; 3 R(I) 39/53

Police and fire services

66346 When considering the course of employment in the police and fire services the DM should note that

1. police or fire officers usually have set hours of duty but may need to take action outside the hours of duty (for example, an off duty police officer is required to intervene in any situation calling for police action)
2. when taking action as in 1. the employee resumes the course of employment
3. apart from occasions as in 1. a police officer is in the same position as any other person and is not in the course of employment between periods of duty
4. police officers who are attacked while off duty are not in the course of employment until taking action to arrest their attacker
5. whether a police or fire officer is in the course of employment when travelling to report for duty or when returning home afterwards, or whether there is continuing responsibility during authorized break(s) from duty depends on the facts of the particular case¹.

1 R(I) 7/85, Appendix; R(I) 7/80, Appendix

66347 - 66350

Split duties

66351 Some employments have split duties. This is where two or more periods of duty during the working day are separated by an interval of free time. The employment cannot always be regarded as continuous from the beginning of the first period of

duty until the end of the last period, even though the employee may be paid for the intervals of free time.

66352 The course of employment is interrupted during a break between duties if the

1. employer has no control of the employee's actions **and**
2. employee is not doing anything incidental to the employment.

The course of employment does not start again until the employee does something incidental to the employment, for example a bus conductor collecting equipment after a rest¹.

1 R(I) 20/58

66353 The employment is regarded as continuing where an employee

1. performs duties throughout a permitted break in employment¹ **or**
2. has continuing obligation to the employer during the break².

1 R(I) 20/61; 2 R(I) 7/80, Appendix

66354 Employees who work a split duty must also be given a reasonable time in which to disentangle themselves from employment. The DM should treat an accident to an employee leaving the employer's premises after the first spell of work, in the same way as one occurring to an employee leaving work at the end of the day¹.

1 R(I) 17/60

66355 Whether the use of facilities such as canteens and toilets provided on the employer's premises is incidental to the employment depends on the length of the break between duties. The position is the same as that of a factory worker who has a recognized meal break. The fact that an employee may sign on and off at the beginning and end of duty does not mean that the course of employment is interrupted¹. See DMG 66441 - 66446 on the use of recreational facilities during breaks.

1 R(I) 64/51; R(I) 39/53

No fixed hours of work

66356 A person who can choose when to work is in the course of employment whilst performing the duties of the employment. Although the person may carry out the work at any time of the day¹ it does not follow that because a person is generally available to attend to the employers business, the employment is continuous².

1 R(I) 64/51; R(I) 39/53; 2 R(I) 22/51

66357 - 66360

Continuous employment

66361 In some employments the course of employment is continuous through the day and night. This means that employees

1. are subject to the orders and control of the employer continuously
2. may spend certain hours engaged in active work and others pursuing their own activities
3. may be called upon to perform duties at any time.

66362 An accident occurring while performing duties as in DMG 66361 normally arises out of and in the course of the employment. Resident domestic servants, resident nurses, mariners while at sea and persons employed on offshore drilling rigs while on the rig are generally engaged in continuous employment¹.

1 CSI 23/50(KL)

66363 In deciding whether the course of employment is broken the DM should note that

1. an act undertaken for personal purposes usually breaks the course of the employment temporarily¹ unless there is a reasonable connection between
 - 1.1 what the person was doing **and**
 - 1.2 the demands of the employment
2. if the accident occurred because the claimant introduced a risk of a personal nature not connected with the employment, it does not arise out of the employment
3. the taking of meals, resting and sleeping, while under the employer's roof, are examples of acts incidental to the employments in DMG 66362²
4. accidents occurring while the person is taking part in the recreational facilities provided on the employer's premises, for example, a mariner using the swimming pool or playing deck games on board ship cannot normally be accepted as arising out of the employment unless accepted as part of the employment³
5. continuous employment may be interrupted on occasions and in particular
 - 5.1 mariners ashore on leave **or**
 - 5.2 domestic servants having an afternoon off away from the house where they are employedare not in the course of their employment⁴
6. while a ship is in port a mariner may
 - 6.1 remain in continuous employment being required to live on board **or**

- 6.2** revert to the position of an ordinary daily worker, required to work for certain hours of the day and being free of the employer's control during the remainder of the time⁵.

1 R(I) 9/59; 2 CI 83/49(KL); R(I) 49/51; 3 R(I) 2/80; 4 CSI 23/50(KL); 5 R(I) 75/53; R(I) 45/56; R(I) 10/66

66364 - 66370

Living accommodation provided or arranged by employer

66371 A person may live permanently or temporarily in accommodation provided or arranged by the employer. Whether living in this accommodation is incidental to the employment depends on the circumstances. It does not matter whether the employee pays for the accommodation. The DM should consider whether

1. the residence is incidental to the employment¹ if the
 - 1.1 person is under an express or implied obligation to the employer to reside in accommodation arranged or provided by the employer **or**
 - 1.2 occupation of the accommodation imposes additional duties by the employee to the employer
2. where there is an obligation as in 1. an act does not arise in the course of or out of the employment if an employee is doing something that is not incidental to the employment such as attending to personal matters²
3. residence in the accommodation is not incidental to the employment³ if the obligation is a condition of employment, **but** is not connected with the actual performance of the employee's duties, for example a farm worker living in a tied cottage
4. employees who have a choice of whether to live in the accommodation are not in the course of their employment whilst staying there⁴, unless acceptance of the offer imposes an obligation as in 1.⁵

1 CS 374/50(KL); R(I) 30/57; 2 R(I) 9/59; 3 CI 49/49(KL); 4 R(I) 22/54; R(I) 75/53; 5 CI 374/50(KL)

66372 An accident happening to a person travelling between

1. the place of work **and**
2. the accommodation arranged by the employer

is considered in the same way as an accident happening to an employee on the way to or from work (see DMG 66401 et seq).

66373 - 66374

Attendance at school or other training establishment

66375 When considering the course of employment where a person at a school or training establishment is following activities inside the syllabus the DM should note that

1. a person normally remains in the course of employment while attending a school or other training establishment when required to attend because of express or implied terms of a contract of service¹
2. an employee may choose to extend attendance at a training course during normal working hours if the
 - 2.1 employer's permission is obtained **and**
 - 2.2 subject matter is relevant to the employment²because such attendance is not voluntary and therefore becomes part of the employment
3. even if it is not possible to treat the attendance as in 2. as part of the employment it may be appropriate to treat it as incidental to the employment³ because this cover does not normally extend to activities outside the training syllabus
4. a person is in the course of employment when involved in any activity in the syllabus even if the person is free to choose whether or not to participate.

1 CI 228/50(KL); CI 314/50(KL); R(I) 4/51; 2 R(I) 31/53; R(I) 66/53; R(I) 2/68; 3 R(I) 2/68

Activities outside the syllabus

66376 When considering the course of employment where activities outside the syllabus are followed DMs should note that

1. where a course is residential they should distinguish between activities
 - 1.1 forming part of the course syllabus **and**
 - 1.2 which occur after the daily sessions have ended
2. during the period of instruction, which may include organized recreation and incidental activities, the employees remain in the course of employment
3. if the employees are free to do more or less what they like (apart from obligations such as sleeping at the college) during other parts of the day, the course of employment is broken¹.

1 R(I) 2/80

Attendance outside normal working hours

66377 Attendance at a training course outside normal working hours is not in the course of employment unless

1. the subject of the studies is related to the nature of work **and**
2. there is evidence of a clear understanding between employer and employee that the studies are undertaken as an essential part of the employment **and**
3. the employer participates in the provision of the studies, for example by paying some part of the fees or expenses.

Note: If a person attending a course during normal working hours is required to attend outside these hours, for example to take an essential examination, the DM can accept this as being in the course of the employment.

Journey to or from school or college

66378 If a person is injured in an accident on a journey to or from the training establishment, the guidance in DMG 66401 et seq applies.

66379 - 66380

Acting in an emergency

66381 In an emergency an employed earner may have to take prompt and unusual action. When considering the question of whether an accident occurring while taking such action arises out of and in the course of employment the DM should consider

1. the ordinary principles **and**
2. whether the accident can be deemed to have arisen out of and in the course of employment¹ if these principles do not help the claimant.

1 SS CB Act 92, s 100

66382 An emergency

1. may be actual or supposed **and**
2. need not involve danger to life, limb, or property¹.

The onus is on the claimant to prove that the action taken was a result of an actual or supposed emergency².

1 R(I) 22/53; 2 R(I) 5/54

66383 If the person

1. is in the ordinary course of work when the emergency arises **and**

2. takes action clearly arising from a duty of employment, for example extinguishing a small fire caused by a blow lamp being properly used

any personal injury suffered whilst taking that action arises out of and in the course of employment.

66384 If the action taken has nothing to do with any duty the person is employed to perform, the action is not in the course of employment.

Example

A railway employee was travelling on a train as a passenger on the way to work. An accident occurred when the railway employee helped another passenger to free a stuck window. The accident did not arise out of the course of employment¹.

1 CI35/50(KL)

66385 If the action taken by the employed earner in an emergency is not clearly one which the employer would expect in the normal course of the work, the DM can accept the action as part of the employment and as reasonably incidental to the work, if it is

1. in the interests of the employer **and**
2. within the implied terms of employment¹.

1 R(I) 63/54; R(I) 46/60

66386 Help given to a motorist by a lorry driver may be sufficiently related to the normal employment to fall within the course of employment, bearing in mind the recognized give and take between all persons using the highway¹.

Note: This principle of give and take only applies if there is some similarity of function between the helper and the helped².

1 R(I) 11/51; 2 R(I) 52/54

66387 A claim may still succeed when

1. it is clear that a person's action is so different from the work as to be outside the scope of employment **but**
2. the action is a reasonable and sensible one to take in the employer's interests in the light of all the circumstances of the particular emergency¹.

The mere fact that the employer would have approved of the action is not sufficient².

1 CI 280/49(KL); R(I) 11/56; 2 R(I) 52/54

66388 A person not in the course of employment may re-enter the scope of employment by voluntarily taking some reasonable and sensible action in the employer's interests in an emergency¹.

1 R(I) 63/54

66389 A person's action in an emergency may not be essential, nor the best course of action to have taken. But the claim can still succeed if it can be shown that

1. it was a reasonable and sensible action **and**
2. it was not unnecessarily foolhardy in the particular circumstances¹.

1 R(I) 52/54

66390 - 66400

Travelling accidents

Introduction

66401 An employee may be involved in an accident on the public highway whilst travelling to or from a place of work. When deciding whether the accident arose out of and in the course of the employment DMs should note that

1. there is no conclusive test to be applied in deciding whether such accidents arose out of and in the course of employed earner's employment
2. they should look at the factual picture as a whole
3. while individual factors are considered in building the picture, no single factor is decisive and they must have regard to and give proper weight to every factor¹.

1 R(I) 7/85, Appendix

66402 The approach in DMG 66401 is a major change from the line previously taken in such cases. Earlier case law had usually taken the view that a person's course of employment

1. began on arriving at the first or only place of work for the day **and**
2. ended on leaving the last or only place of work.

Note: The change of approach means that the DM should follow the earlier decisions on travelling accident cases only where they are in keeping with the general principles in DMG 66401.

66403 - 66404

General principle

66405 The basic principle of law is that employees are acting in the course of their employment when they are doing what they are employed to do or anything which is reasonably incidental to their employment¹.

1 St Helens Colliery Ltd v. Hewitson [1924] AC59

66406 The effect of DMG 66405 is that employees involved in an accident while travelling on a public road are acting in the course of their employment if they are going about their employer's business at the time of the accident¹. But the DM should not confuse the duty to turn up for work with the concept of already being on duty while travelling to it. In other words, was the journey a journey to work or a journey which was itself part of the work?

1 Smith v. Stages and Another [1989] 2 WLR 529

General propositions

66407 Six propositions have been laid down to assist in deciding whether employees travelling on a road are acting in the course of their employment¹. These propositions are that

1. an employee travelling from his ordinary residence to his regular place of work, whatever the means of transport and even if it is provided by the employer, is not on duty and is not acting in the course of his employment. But, if he is obliged by his contract of service to use the employer's transport, he will normally, in the absence of an express condition to the contrary, be regarded as acting in the course of his employment while doing so.
2. travelling in the employer's time between workplaces (one of which may be the regular workplace) or in the course of a peripatetic occupation, whether accompanied by goods or tools or simply in order to reach a succession of workplaces (as an inspector of gas meters might do), will be in the course of the employment.
3. receipt of wages (though not receipt of a travelling allowance) will indicate that the employee is travelling in the employer's time and for his benefit and is acting in the course of his employment. In such case the fact that the employee may have discretion as to the mode and time of travelling will not take the journey out of the course of his employment.
4. an employee travelling in the employer's time from his ordinary residence to a workplace other than his regular workplace or in the course of a peripatetic occupation or to the scene of an emergency (such as a fire, an accident or a mechanical breakdown of plant) will be acting in the course of his employment.
5. a deviation from or interruption of a journey undertaken in the course of employment (unless the deviation or interruption is merely incidental to the journey) will for the time being (which may include an overnight interruption) take the employee out of the course of his employment.
6. return journeys are to be treated on the same footing as outward journeys.

1 Smith v Stages and Another [1989] 2 WLR 529

66408 These propositions are a general guide and should not be applied rigidly. The DM should not try to fit the facts of any case to the circumstances in DMG 66407. The DM should look at the factual picture as a whole without any single factor being decisive. The DM should decide each case on its individual facts.

66409 - 66414

Consideration of factors - question of payment

66415 An important and frequent consideration is whether the claimant was being paid at the time of the accident. The receipt of wages is an important indicator in deciding whether the employee was

1. travelling in the employer's time and for the employer's benefit **and**
2. therefore acting in the course of employment¹ (see DMG 66407).

1 Smith v. Stages and Another [1989] 2 WLR 529

66416 Apart from specifying that receipt of wages does not include receipt of a travelling allowance, it is not defined in case law. If the claimant was eligible to claim overtime or to take time off in lieu when the accident took place, it is reasonable to accept this as receipt of wages under DMG 66407¹.

1 Smith v. Stages and Another [1989] 2 WLR 529

66417 There will be cases where claimants, for example sales staff, are not paid for specific hours but are expected to achieve a particular objective set by the employer by working whatever hours are necessary. These claimants may

1. have to travel from place to place in order to achieve an objective **and**
2. not be paid for the specific journey.

This should not automatically prevent the DM from accepting an accident during such a journey as arising in the course of employment.

Assessment of factual picture

66418 Though previous guidance has concentrated on the question of payment, all facts are potentially relevant in assessing the factual picture¹. But some elements of the factual picture may be more significant than others in reaching a conclusion.

Example

A claimant had a road accident while driving home in his employer's van on a Monday evening having worked on site over the weekend². The accident arose in the course of his employment because

1. the claimant did not have a single place of work
2. the journey home by van instead of by his usual means of rail was as a direct result of his having been detained by his employment over the weekend
3. he was using a company van and petrol with the employer's consent
4. while using the van he was subject to a number of restrictions about the route taken and about overnight parking.

1 R(I) 7/85, Appendix; 2 R(I) 1/88

66419 The case in DMG 66418 was decided on its individual facts and should not be cited as a precedent. But it does illustrate that a journey home from work, which in most cases would not be regarded as in the course of employment, can be held to be in the course of employment if the overall factual picture leads to that conclusion.

Travelling as passenger in employer's transport

66420 There is special protection for people who are injured in accidents while travelling to or from work as passengers in transport operated or arranged by their employer¹ (see DMG 66571 - 66595).

1 SS CB Act 92, s 99

66421 - 66424

Acts incidental to and acts interrupting employment

General

66425 Employees may interrupt the course of their employment by doing something they are not required to do as part of their work. But case law in force before 5.7.48 gradually widened the scope of the original concept that employees remained in the course of their employment only if they were carrying out an obligation or duty of their contract of service. As a result the term “course of employment” was extended to eventually cover acts

1. employees were required to do by virtue of their employment **and**
2. which were reasonably incidental to the employment.

66426 The Commissioners, as they then were, and the Courts have continued to widen the scope of the term “course of employment”. The DM may accept a very wide range of activities as reasonably incidental to the employment. This means that

1. some decisions of the Commissioners given in the early years of the II scheme can no longer be taken as a reliable guide to the sort of acts which might now be regarded as interrupting or not interrupting the course of a person’s employment
2. the DM should
 - 2.1 follow the guidance in DMG 66427 et seq when considering cases involving acts incidental to or acts interrupting a person’s employment **and**
 - 2.2 use the early case law with caution.

66427 The words “reasonably incidental”¹ are not statutory words but words of explanation². They cover natural acts enabling employees to continue at their work, such as eating, smoking, obtaining food or cigarettes, visiting the toilet etc. The first consideration is always to determine what is the extent of a person’s employment, that is, what was the person employed to do. It should then be decided whether the particular accident was in the discharge of a duty or something reasonably incidental to it³.

1 R(I) 4/66, Appendix; 2 R(I) 5/75, Appendix; 3 Faulkner v CAO

66428 Some activities as in DMG 66427 will be marginal. The DM must obtain the full facts before making a decision if there is doubt whether a particular activity

1. is incidental to a person’s employment **or**
2. interrupts the course of the employment.

For example the DM may need to consider how long the person was away from work and whether the length of the absence and the purpose of it was reasonable.

66429 Breaks in travelling employments require particularly careful consideration.

Example

The driver of a vehicle is injured after leaving her vehicle of her own accord to buy food or cigarettes. In this case the DM needs to establish whether the purchase was for the driver's own consumption or someone else's. If the employee bought the items for somebody else, the act interrupted the course of the employment because it was not part of, or incidental to, what the person was employed to do.

66430 The combinations of circumstances which the DM may have to consider in order to decide whether a particular act is incidental to, or interrupts, a person's employment are limitless. No hard and fast rules can be laid down but DMG 66431 et seq covers some of the more common situations which have arisen in case law.

Incidental to

66431 The DM should distinguish between acts which are

1. incidental to the employment **and**
2. incidental to something which is already incidental.

An act which is not itself incidental to the performance of a person's employment, but is merely related to another act which is incidental to the employment, is not an act in the course of the employment¹.

1 R(I) 7/59

Welfare and related amenities

66432 Employers may provide facilities for their employees, including

1. toilet, washing and bathing facilities
2. rest room, sick bay, first aid and medical and nursing facilities
3. child nursery
4. trading amenities.

This list is not exhaustive.

66433 If an accident occurs during working hours involving the use of facilities in DMG 66432 the DM should accept the activity as incidental to the employment unless

1. the person concerned introduced a new risk unconnected with the employment **or**

2. evidence suggests that the employer did not agree to the use of the facility.

66434 If the DM decides that the accident arose from an act which was not incidental to the person's employment it may still not be an act which breaks the course of employment. In these cases DMs should base their decision on failure to show that the accident arose out of the employment.

66435 An accident resulting from the use of facilities as in DMG 66432 might not be incidental to the employment if it happened

1. outside working hours **or**
2. during a break in the person's employment.

Attending meetings

66436 Employees who have an accident while attending a meeting may not necessarily interrupt the course of their employment. Factors to consider are whether the meeting was

1. on (or in the vicinity of) the employer's premises
2. in the employer's (as well as the claimant's) interests
3. with the employer's permission (except or implied)
4. during working hours.

66437 Although no one factor is conclusive, the DM should consider whether anything tips the balance in favour of the claimant¹ (see also DMG 66455 - 66459).

1 R(1)/93

66438 - 66440

Social and recreational amenities

66441 Claims from people injured in accidents arising out of and in the course of some social or recreational amenity provided by the employer should be considered first by determining the extent of the person's employment, that is, what was the person employed to do? It can then be considered whether, when the incident occurred, the person was discharging a duty or whether it was something reasonably incidental to that duty (see DMG 66425 et seq).

66442 Generally, if a person was obliged

1. under the terms of a contract of service **or**
2. by some order given by an employer

to attend or take part in the particular activity in question, the course of employment will probably not have been broken if the person was fulfilling that obligation.

66443 However, if the person was taking part in some activity which was purely voluntary, then the course of employment may have been interrupted. This is so even if the activity occurred with the employer's permission and encouragement and in the employer's time.

66444 This type of situation sometimes arises in claims from members of the police force or fire service. For example police officers may be encouraged to interact with members of the public by playing football, either during or outside their normal hours. If they are under no obligation to do so, the activity cannot be said to arise in the course of their employment. Nor can it be said that playing football is reasonably incidental to the work a police officer is employed to do¹.

1 Faulkner v CAO

66445 That is not to say that playing football can **never** be accepted as activity in the course of an employment. For example, if it formed part of a physical training course which was intended to make a person fit for strenuous duties, it could be accepted as in the course of employment¹.

1 R(I) 5/75 Appendix

66446 It may be difficult to identify the line between

1. recreational activities forming part of employees' training **and**
2. activities undertaken simply because they are available to them because of the work they do.

66447 - 66450

Extra activities

66451 Some groups of workers, especially school teachers, are regularly asked to undertake work related commitments outside the ordinary hours of work. When considering extra activities DMs should note that

1. school teachers, as part of their contract with the educational authorities, normally agree to carry out any duties connected with the work of the school
2. they should interpret "connected with" as meaning "having an educational value or promoting the physical and mental well-being of the pupils"
3. if a teacher suffers an accident arising out of and in the course of an activity which satisfies **2.** they may accept it as an IA if the employer knew and approved of the activity¹
4. the fact that the teacher may have initially suggested the activity is irrelevant

5. they should take an approach similar to 1. to 4. where the claim involves someone other than a school teacher which means that they should consider the terms of employment and the relationship of the extra-mural activity to the claimant's normal work.

1 R(I) 62/52; R(I) 39/56

66452 - 66454

Trade union activities

66455 When deciding accidents that happen during trade union activities, the DM should ask whether the activity which gave rise to the accident was part of what the person was employed to do. Generally, the DM may accept that employees remain in the course of their employment while at a trade union meeting if

1. the employees are authorized by their employer to attend the meeting or their attendance is a condition of their employment **or**
2. the meeting is held
 - 2.1 with the employer's permission on the employer's premises **and**
 - 2.2 during working hours or during a meal break **and**
 - 2.3 for the purpose of discussing matters with which the employer is concerned and the audience is limited to employees¹.

1 R(I) 63/51

66456 Where neither of the conditions in DMG 66455 is fulfilled, attendance at a trade union meeting may interrupt the course of a person's employment even though the meeting is held during working hours and with the employer's permission.

66457 Employees are normally in the course of their employment when travelling to or from a meeting if they are

1. delegated by their employer to attend the meeting at premises other than those at which they are normally employed **or**
2. required to attend the meeting as a condition of employment.

66458 Acts performed by local union officials during working hours **and** in which both the employer and the employed earners have a common interest can be accepted as reasonably incidental to the employment¹.

1 R(I) 9/57

66459 The DM should normally have no difficulty in accepting an accident suffered while carrying out trade union activities if the employee

1. is paid and employed as an employed earner by a trade union (which may be P/T or subsidiary to their main employment) **and**

2. has not interrupted the course of their employment by some personal act.

66460

Acting under orders from a superior

66461 The ordinary scope of a person's employment may be enlarged by an order, authority or permission, from a superior whose instructions the person is required to obey, if the act in question is

1. for the purposes of, or incidental to, the employment¹ **and**
2. reasonable and sensible in the circumstances² **and**
3. done in response to an order having the authority (express, implied or apparent) of the employers **and**
4. intended by both parties to be done under the contract of service rather than as an act of good nature or friendship³ **and**
5. a permitted act⁴.

The scope of a person's employment may also be extended by an act incidental to the employment and which is with the implied consent of the employer⁵.

1 R(I) 24/52; 2 R(I) 32/54; 3 R(I) 36/55; R(I) 24/56; R(I) 8/61; 4 R(I) 12/61; 5 R(I) 1/77

66462 - 66464

Breach of rules or orders, or acting without instructions

66465 In principle employees who

1. are breaking
 - 1.1 regulations applying to their employment **or**
 - 1.2 orders given by or on behalf of their employer **or**
2. are acting without instructions from their employer

interrupt the course of their employment. An accident occurring at that time normally does not arise out of and in the course of employment.

66466 The DM may deem an accident as in DMG 66465 to arise out of and in the course of a person's employment if certain conditions are satisfied¹ (see DMG 66556 - 66563).

1 SS CB Act 92, s 98

66467 - 66470

Negligence or foolhardiness

66471 Employees performing an act of their employment (or an act incidental to their employment) negligently or carelessly do not as a result take themselves out of the course of their employment. No amount of negligence can turn an employment act into an act outside the employment¹. If the carelessness or negligence breaks a rule of the employment but the act is still an employment act, the DM may be able to deem the act to have arisen out of and in the course of employment².

1 R(I) 71/52; R(I) 16/60; 2 SS CB Act 92, s 98

66472 But a reckless or improper act that is different from

1. anything employees are employed to do **or**
2. what is reasonably incidental to 1.

interrupts the course of the employment, even if it is done to enable an employment act to be carried out.

Note: Whether an act is foolhardy enough to rank as an act outside the scope of the employment is a question of fact to be decided in the circumstances of each case.

Evacuation of premises

66473 Employees have interrupted the course of their employment if they are¹

1. instructed to evacuate the premises where they work (for example because of a bomb scare) **and**
2. instructed to return after a specified time **and**
3. given no direction on what to do while away from the premises.

Although employers have a duty to ensure the safety of their employees, a requirement to evacuate does not further their business interests but may be compared with a closure of the premises for, say, a mid-day break.

1 R(I) 6/76

66474

Voluntary assistance to others

66475 Employees may give assistance to a fellow employee (in circumstances not constituting an emergency) although not required to do so. They are acting incidentally to their employment¹ if

1. they are assisting a workmate to overcome some difficulty in their work **and**

2. their actions are reasonable and desirable from the employer's point of view
and
3. the nature of the task is within the scope of their own work.

1 R(I) 76/51; R(I) 1/66, Appendix

66476 Employees cannot usually be regarded as acting incidentally to their own employment if they voluntarily gives assistance to a fellow worker

1. solely for the fellow worker's personal advantage **and**
2. without the express or implied permission of their employer

for example to achieve a bonus output or high piece-rate earnings.

66477 If employees give assistance to a member of the public or to an employed earner of another firm (apart from in an emergency) and it is not part of their work their actions are incidental to their employment only if they

1. are proper and sensible **and**
2. reasonably assist the purpose of their own work¹.

1 R(I) 13/68

66478 - 66480

Acts for personal purposes

66481 The DM may usually regard acts of a personal or private nature, for example

1. having a meal or refreshments
2. going to the toilet
3. drying clothes

as being undertaken in the course of employees' employment. This applies even though the employees are not required by their employment to perform them, provided they occur during the person's working hours and with the employer's express or implied permission.

66482 The DM can accept accidents arising from acts in DMG 66466 as also arising out of the employment, unless employees added a fresh risk not attributable to the employment¹.

Note: An act which would otherwise satisfy these criteria might be done in such an unusual or reckless way that it cannot be regarded as coming within the scope of a person's employment. If this applies any accident resulting from such an act does not arise out of and in the course of the employment².

1 R(I) 2/63; 2 R(I) 16/60

Retrieval of personal property

66483 Employees who

1. accidentally drop something and immediately recover it **or**
2. involuntarily react by catching or avoiding something thrown at them

are acting so naturally and reasonably that their action can be regarded as occurring within the course of their employment¹.

1 R(I) 4/73

66484 If, on the other hand

1. employees make a calculated attempt to retrieve personal property **and**
2. this exposes them to a danger which is not a risk to which their work would be expected to subject them

the DM should not accept any accident resulting from this as arising out of and in the course of their employment¹.

1 R(I) 20/54

Smoking

66485 When considering the issue of smoking the DM should note that

1. the act of smoking at work, with or without permission, normally has nothing to do with the employment
2. injury to employees solely by their own act of smoking, for example a direct burn from match or cigarette, does not arise out of their employment
3. smoking, if permitted by the employer is an act which does not interrupt the employment¹
4. an accident may be caused indirectly by smoking in such circumstances, for example a gas explosion (see DMG 66486).
5. where an accident is caused by someone else's smoking, it can usually be accepted as arising out of the injured person's employment
 - 5.1 by analogy with the principles in 1. to 4. **or**
 - 5.2 under the legislation² if there is an element of negligence on the other employee's part.

1 R(I) 4/66; 2 SS CB Act 92, s 101

66486 Where DMG 66485 4. applies, the DM may accept the accident as arising out of and in the course of employment if it is

1. due to an existing employment risk **and**
2. not due to a different risk introduced by the employee¹.

1 R(I) 2/63

66487

Heating and ventilation

66488 The employer may provide or permit heating, for example a fire or stove for the comfort of employees and for the efficient performance of the work. Reasonable actions relating to such heating are incidental to, and part of, the employment. But if employees

1. introduce unauthorized heating **or**
2. tamper with the heating supplied for their personal comfort and without authority

their actions may interrupt their employment¹. Similar principles apply to ventilation².

1 R(I) 24/51; R(I) 80/53; 2 R(I) 32/55; R(I) 3/62

66489 - 66490

Sleeping

66491 If employees deliberately sleep, with or without leaving their place of duty, they interrupt the course of their employment¹. But an accident happening to employees who have merely dozed off at their place of work, arises out of and in the course of their employment unless the act bringing them to the place where they fell asleep

1. took them outside the sphere of their employment, for example it was done for personal purposes **or**
2. was so rash as to take them outside the sphere of their employment².

1 R(I) 68/54; 2 R(I) 36/59

66492 - 66494

Breaking away from work, or taking advantage of a lull

66495 When considering breaking away from work, or taking advantage of a lull, the DM should note that

1. employees interrupt the course of their employment if for personal purposes and without the express or implied permission of their employer they

- 1.1 break off their work to see a workmate **or**
- 1.2 otherwise go or stay away from their work when they should be doing it
- 2. an accident in 1. does not, therefore, arise out of and in the course of the employment¹
- 3. employees may be allowed a recognised break before their normal finishing time, when they can wash before going home
- 4. if they use the break in 3. for
 - 4.1 some other personal purpose without the express or implied permission of the employer, they normally interrupt the course of their employment **or**
 - 4.2 a purpose connected with their employment, their action can usually be accepted as incidental to and in the course of, the employment
- 5. if during lulls in work employees do something that
 - 5.1 is not unreasonable **and**
 - 5.2 does not interrupt their own or any one else's work **and**
 - 5.3 furthers their employer's interests

they may be regarded as having their employer's implied permission to undertake the action and be held not to have interrupted the course of their employment².

1 R(I) 4/66; 2 R(I) 13/68

66496 However, employees may interrupt the course of their employment¹ if they do something

- 1. unconnected with **or**
- 2. not reasonably incidental to their employment.

1 CI 326/50(KL)

66497

Wandering on premises or tampering with machinery

66498 Generally speaking, unauthorized interference with machinery or wandering away from the work place to other parts of the premises out of curiosity interrupts the course of employment. Examples of this include employees

- 1. wrongfully tampering with machinery or equipment¹ **or**
- 2. using such equipment for purely personal purposes² **or**
- 3. leaving their place of work without the express or implied permission of their employer and going to another part of the premises out of

- 3.1 curiosity **or**
- 3.2 personal interest **or**
- 3.3 other motives not related to their work³.

1 CI 28/49(KL); R(I) 77/54; 2 R(I) 8/55; 3 CI 47/49(KL); R(I) 1/58; R(I) 45/59

66499 Similar principles apply if

- 1. such actions take place during a recognised break, for example a lunch hour¹
or
- 2. following an authorised break, the employed earner remains in another part of the factory after other workers have returned to work².

1 R(I) 5/54; 2 R(I) 44/57; R(I) 4/66

66500

Breaks for meals or refreshment

66501 The DM should give “refreshment breaks” its widest sense to include not only tea or coffee breaks but also any other breaks, for example smoking, intended to refresh the worker.

66502 Taking a permitted meal or refreshment break during working hours is an activity incidental to the person’s employment. If employees spend the break within the sphere of their employment, for example in the works canteen or elsewhere at their place of work, any accident sustained during the break

- 1. arises in the course of their employment **and**
- 2. may be regarded as arising out of the employment

provided it has not resulted from a fresh risk of a personal nature not attributable to the employment¹.

Note: If employees of their own accord overstay an authorised break to a material extent, they may as a result interrupt the course of their employment. Where this applies any accident arising could not be accepted as an IA².

1 R(I) 17/60; 2 R(I) 44/57

66503 Apart from breaks for which specified times are allotted, employees may be allowed to take refreshment, for example make tea at their own discretion, on the employer’s premises during their hours of work. The DM can accept these unscheduled breaks as incidental to and within the course of the employment if the discretion is not exercised unreasonably¹.

1 R(I) 34/53

66504 If the meal or refreshment is

1. supplied by or on behalf of the employer **and**
2. eaten in the course of the employment

any accidental personal injury caused by the food itself, for example cuts from glass in the food or food poisoning, arises out of the employment¹. This applies whether or not the employee has to buy the food.

1 R(I) 3/63

Ownership and place of canteen

66505 To be within the sphere of employment

1. the canteen or other place of refreshment used by employees need not be
 - 1.1 on their employer's premises **or**
 - 1.2 be operated by or on behalf of their employer **but**
2. it must be shown that employees are entitled to use the canteen only because of their employment.

Note: If the canteen is not owned by the employer, or is not operated by or on behalf of the employer the canteen must be for the exclusive use of employees of employers who have made arrangements with the owner¹.

1 CI 34/50(KL); R(I) 11/53

Journey to canteen or to obtain food

66506 If the canteen or place of refreshment is accepted as within the sphere of the employment, employees' journeys to or from

1. the meal **or**
2. the place where they keep their food, for example a locker

are also incidental to and in the course of their employment if they are within the employer's premises or the premises in which the canteen is situated¹.

1 CSI 6/49(KL)

66507 An accident happening to employees on a journey taking them across or along the public highway to the canteen is subject to the same considerations as other types of accidents on the public highway (see DMG 66401 - 66408).

Visit to canteen before or after work

66508 Employees who visit an employer's canteen for

1. a meal **or**
2. other purposes designed to equip themselves for their work

may have entered the course of the employment, even though the actual time for starting work has not arrived¹. In these cases employees will usually be doing something on the employer's premises incidental to their employment.

1 R(I) 72/54; R(I) 16/75, Appendix

66509 Employees who visit the canteen **after** their day's work has ended usually terminate the course of their employment if they deviate from a direct route off the premises¹. But if a meal is provided as part of their remuneration, employees usually remain in the course of the employment whilst taking that meal².

1 R(I) 52/52; R(I) 60/54; 2 R(I) 15/55

Break spent away from employer's premises

66510 An accident which happens

1. during a break spent in a public restaurant **or**
2. elsewhere outside premises to which employees have access solely by virtue of their employment

cannot usually be accepted as occurring within the course of their employment. However, a different view may be taken if there is a continuing obligation to the employer during the break.

66511 For example, it may be accepted that employees remain in the course of their employment during a break if they can show that

1. they have a duty to perform during the break¹ **or**
2. they remain on duty in the sense that they remain on call and have, or may have, duties to perform taking precedence over the break² **or**
3. the break is a permitted break (for example a bus crew's turn-round break) which is being used for its intended purpose and during which employees remain under a continuing obligation to their employer³.

1 R(I) 21/53; R(I) 20/61; R(I) 4/79; 2 R(I) 7/80, Appendix; 3 R(I) 4/67

66512 Cases under DMG 66511 **3.** in which the permitted break exceeds about 30 minutes or is being used for purposes other than those for which it is intended should be considered carefully. The DM should find out

1. the nature and requirements of the employment **and**
2. the intervals at which breaks occurred **and**
3. the nature of the break in question **and**
4. the purpose to which the employer and the injured person envisaged the break would be put **and**
5. what the person was doing or intending to do when the accident occurred.

66513 - 66514

Recreation during break

66515 Recreational amenities, for example dancing, football, darts or table-tennis, are sometimes provided on an employer's premises, in or near the canteen, for employees' use during breaks. Where recreation during a break is being considered the DM should note that

1. an injury can usually be accepted as arising out of and in the course of their employment¹ if, whilst taking their break
 - 1.1 an employee sustains an injury caused by other employees engaged in recreation **and**
 - 1.2 they themselves are not engaged in recreation
2. if an employee sustains an injury while using recreational amenities the injury does not usually arise out of the employment because it will have been caused by a fresh risk of a personal nature not attributable to the employment, such as the risk of
 - 2.1 piercing oneself with a dart **or**
 - 2.2 injuring oneself with a football
3. in rare cases injuries to employees taking part in activities in **2.** may arise out of the employment, if the cause is an employment risk rather than a personal risk for example where a
 - 3.1 wall of the premises falls on employees playing football **or**
 - 3.2 lorry careers off the factory road on to the playing area and strikes them.

1 R(I) 16/75, Appendix

66516 - 66520

Acts and risks outside employment

66521 Employees may interrupt the course of their employment during a meal or refreshment break by doing something which is not necessary or incidental to

1. their work **or**
2. the taking of the meal or refreshment.

Example

A workman on a building site may leave the sphere of his employment, wander out of curiosity into places where he is not authorized to enter or otherwise indulge in some personal activity which he has neither the employer's express nor implied

permission to undertake. The fact that the situation arises during an authorized break does not affect the position. It is subject to the same considerations as would apply if the workman were actually engaged in work immediately before the interruption¹.

1 CI 28/49(KL); R(I) 5/54; R(I) 8/60; R(I) 10/81

66522 - 66550

“Deeming” provisions

66551 Provisions exist enabling the DM to treat an accident as arising out of and in the course of a person’s employment where this would not otherwise be possible. These provisions cover situations where

1. an accident arising in the course of employed earner’ employment is deemed, in the absence of evidence to the contrary, also to have arisen out of that employment¹ (see DMG 66552 - 66553)
2. employed earners acting in contravention of regulations or orders or acting without instructions² (see DMG 66556 - 66563)
3. employed earners travelling to or from work in their employer’s transport³ (see DMG 66571 - 66595)
4. employed earners meeting an emergency at or about the premises where they are employed⁴ (see DMG 66611 - 66625)
5. an accident caused by
 - 5.1 another person’s misconduct or negligence **or**
 - 5.2 the behaviour or presence of an animal **or**
 - 5.3 employed earners being struck by an object or by lightning⁵ (see DMG 66631 - 66659).

1 SS CB Act 92, s 94(3); 2 s 98; 3 s 99; 4 s 100; 5 s 101

Presumption of “arising out of”

66552 In the absence of evidence to the contrary an accident arising in the course of a person’s employment is deemed to have arisen out of that employment¹. The DM may presume that an accident arose out of the employment if

1. the evidence establishes that an accident occurred during the course of a person’s employment **and**
2. there is no evidence that the accident did not arise out of the employment.

Note: For the presumption to apply there must be no evidence to the contrary. There is no element of proof involved and the DM is not required to consider any question of balance of probability².

1 SS CB Act 92, s 94(3); 2 CI 3/49(KL); R(I) 21/58

66553 The provision¹ in DMG 66552 is intended to cover the situation where the facts about an accident cannot be found out. It does not apply where the facts are known and it is a question of applying the law to those facts.

Note: Evidence to the contrary may amount to no more than a reasonable inference from the known facts.

1 R(I) 16/61

Example

Jack is injured during the course of his employment, when his leg gives way for no apparent reason. He will not be helped by the deeming provisions. The circumstances are known and indicate that, whatever the cause, it is reasonably clear that it was not due to any risk of the employment.

66554 The presumption can also be applied where nothing is known or can be discovered to indicate whether or not injury arose out of the employment.

Example 1

Gary is found dead at his place of work without any evidence as to the events leading to his death.

Example 2

Lynn suffers a head injury whilst working alone but is unable to say what happened because of loss of memory.

66555 Reasonable inference against the presumption must amount to more than mere speculation.

Example

An unsupported suggestion that a claimant injured in unknown circumstances could have been the victim of an assault unconnected with the employment is not enough to deprive him of a presumption in his favour¹.

1 R(I) 1/64

Breach of rules or orders, or acting without instructions

66556 In principle an accident that happens to employees who

1. are breaking
 - 1.1 regulations applying to their employment **or**
 - 1.2 orders given by or on behalf of their employer **or**
2. are acting without instructions from their employer

does not arise out of and in the course of the employment.

66557 But the DM can deem an accident in those circumstances to have arisen out of and in the course of the employment if¹

1. the accident would have arisen out of and in the course of the employment had the employed earner not been acting against or without orders **and**
2. the act done against or without orders was done for the purposes of and in connection with the employer's trade or business.

Note: An employer's trade or business includes an employment training scheme or course.

1 SS CB Act 92, s 98

66558 Guidance on the questions arising in connection with this deeming provision is at DMG 66559 - 66564.

Regulations or orders

66559 In a case involving a breach of regulations or orders, the deeming provision can only apply if the regulations or orders being broken are within the definition laid down in the Act. That is, they must be any

1. statutory or other regulations applicable to the person's employment **or**
2. orders given by or on behalf of the employer.

The deeming provision cannot be applied¹ if employees have interrupted the course of their employment by breaking a rule not within that definition.

1 CI 182/49 (KL)

66560 For the purposes of the deeming provision¹

1. regulations other than statutory ones **or**
2. orders falling within the definition laid down in the Act but which have never, or only occasionally, been enforced

are not valid. On the other hand the employer cannot lawfully release or waive a statutory regulation. The provision applies therefore in a case involving breach of a statutory regulation, even though there may be no evidence that the regulation is enforced².

1 CI 220/49(KL); R(I) 96/53; 2 CI 11/49(KL)

Application of the deeming provision

66561 The deeming provision is often misunderstood. The DM should note that

1. the provision about acting without orders (see DMG 66556) means that if the only circumstances suggesting the interruption of employment are the breach of rules or absence of instructions the breach or absence may be ignored if the act is done for the benefit of the employer (see DMG 66557 **2.**)

2. the deeming provision does not remove the need to show that employees' actions were of a kind that they were employed to perform
3. the deeming provision cannot be used to extend the scope of the employment to include
 - 3.1 an activity which would not in any event be part of, or reasonably incidental to the employment¹ **or**
 - 3.2 a time which would not otherwise be in the course of the employment²
4. if employees are doing something they are employed to do, but are doing it in a negligent, careless or prohibited manner in breach of a rule or regulation, this does not prevent the deeming provision applying to them³.

*1 CI 28/49(KL); R(I) 8/55; R(I) 16/60; 2 CI 35/50(KL); R(I) 28/55;
3 CI 11/49(KL); R(I) 25/55; R(I) 8/59; R(I) 1/66*

66562 It is not usually reasonable to accept that the case falls within this provision where employees are doing something which is the duty of another class of employee whose duties are not interchangeable with their own. Where it is undisputed that it would not be acceptable to anyone involved for employees to do what they did

1. their action is outside the scope of their employment **and**
2. they cannot benefit from this provision¹.

Note: The opposite also applies².

1 R(I) 12/61; R(I) 166; 2 R(I) 41/55

66563 The requirement of DMG 66556 2. is that the action in breach of rules or in the absence of instructions must have been done

1. for the purposes of **and**
2. in connection with

the employer's trade or business.

66564 The provision has a twofold effect. It

1. stresses that the action must not be one for the claimant's personal purposes **and**
2. means that the deeming provision cannot be applied in cases where the employer conducts no trade or business for example it could not be applied to the domestic servant of a person who has no trade or business.

66565 - 66570

Travelling in employer's transport

66571 While travelling to or from their usual place of work employees are normally outside the course of their employment. Their contractual obligations to their employer normally

1. do not begin until they reach their place of work **and**
2. end on leaving their place of work.

But the course of employment may be extended in some cases if employees travel to work in vehicles operated by or on behalf of their employers.

Note: A place of work includes any place at which an employment training scheme or course is provided for IIDB purposes.

66572 When considering travelling in employer's transport the DM should note that

1. the journey is in the course of the employee's employment
 - 1.1 where the use of the transport in DMG 66571 is compulsory **and**
 - 1.2 unless the employee interrupts the course of the employment by their own actions, for example by larking about
2. where the use of the employer's transport is not compulsory, the journey is not normally in the course of the employees' employment unless they are carrying out some task for the employer while travelling.

Accident while travelling as a passenger

66573 Accidents may happen to employees travelling by their own choice to or from their place of work as a passenger in any vehicle operated by or behalf of the employer. In these cases the accident is deemed, subject to certain conditions, to arise out of and in the course of the employment¹. The DM should note that

1. employees must be travelling as passengers to or from their place of work (see DMG 66577 - 66579) **and**
2. employees must have their employer's permission to travel in the vehicle (see DMG 66583) **and**
3. at the time of the accident the vehicle must have been
 - 3.1 operated by or on behalf of the employer **or**
 - 3.2 provided by some other person as arranged by the employer (see DMG 66584 - 66586) **and**
4. the vehicle must be one which, at the time of the accident, is not being operated as a public transport service (see DMG 66591 - 66592) **and**
5. the accident must be one which would have been accepted as arising out of and in the course of the employment had the employees been obliged to travel by the vehicle (see DMG 66595).

1 SS CB Act 92, s 99(1)(a)(b)(i) & (ii)

66574

Vehicle

66575 The word “vehicle” should be given a broad meaning and not necessarily confined to those means of transport specifically designed for the carriage of passengers¹. It includes

1. a ship
2. a vessel
3. a hovercraft
4. an aircraft²
5. a motor-cycle³
6. a train **and**
7. a tractor⁴.

1 R(I) 42/56; 2 SS CB Act 92, s 99(2); 3 R(I) 8/51; 4 R(I) 42/56

66576

Travelling as a passenger

66577 When considering DMG 66573 the DM should note that

1. the term “passenger” does not apply to
 - 1.1 the driver of a vehicle¹ **or**
 - 1.2 the rider of a bicycle² or motorcycle³ **or**
 - 1.3 the driver of a car⁴
2. a pillion passenger on a motor cycle has been held to be a passenger⁵
3. employees may be travelling as passengers even if they travel in or on some part of the vehicle not designed for carrying passengers⁶.

1 CI 49/49(KL); 2 CI 33/50(KL); 3 R(I) 9/51; 4 R(I) 51/51; 5 R(I) 8/51; 6 R(I) 42/56

66578 The DM may regard employees as travelling to or from their place of work by their employer’s vehicle even though the vehicle takes them only part of their journey¹.

Note: A journey home from a place to which employees had deviated for their own purpose does not satisfy the conditions².

1 R(I) 8/62; 2 R(I) 40/55

66579 Employees must actually be **travelling** in or on the vehicle. Travelling

1. includes
 - 1.1 the act of getting on or off a vehicle¹ **and**
 - 1.2 times when the vehicle is stationary before, during, or after a journey
2. does not include periods when employees are off the vehicle, such as walking to it or from one vehicle to another at a changing point².

Note: An accident that happens before getting on or off a vehicle may be covered under the provisions relating to access to and exit from the place of work (see DMG 66331).

1 CI 182/49(KL); R(I) 48/54; 2 R(I) 79/51; R(I) 48/54

66580 - 66582

Employer's permission

66583 The employer's permission, express or implied, is essential. If employees are travelling without permission these provisions do not apply. If employers have not given express permission but they

1. are aware that their employees use their vehicle for travelling **and**
2. have not banned the practice

the DM should take it that employees have their employer's implied permission.

Ownership and operation of vehicle

66584 The vehicle must be operated by or on behalf of either

1. the employer **or**
2. some other person who has provided it in pursuance of arrangements made with the employer¹.

1 SS CB Act 92, s 99(1)(b)(i)

66585 The arrangements in DMG 66584 do not need to be in the form of a written contract and the employer does not need to have the exclusive use of the vehicle¹. However, in order for DMG 66584 to be satisfied

1. there must be some definite arrangement to which both the employer and the person providing the vehicle are parties **and**
2. the purpose of the arrangements must be the provision of transport for the employer's workforce².

Arrangements whereby an employee gives a lift to fellow employees do not usually satisfy this condition³.

1 R(I) 49/53; 2 CI 101/49(KL); R(I) 67/51; R(I) 3/59; 3 R(I) 5/60

66586 If the transport is provided by a public transport undertaking, a more definite arrangement must be in existence to satisfy the condition than would otherwise be necessary¹. Employees deviating in any way from the arrangements made with the employer are not covered by DMG 66573 unless that deviation is made with the employer's agreement².

1 R(I) 15/57; 2 R(I) 5/80

66587 - 66590

Not in public transport service

66591 DMG 66573 does not apply

1. if at the time of the accident, the vehicle is being operated in the ordinary course of a public transport service¹, that is members of the public may
 - 1.1 travel by **or**
 - 1.2 otherwise use the vehicle at that time **and**
2. even if no members of the public are actually travelling by or using the vehicle at the time.

Note: If the public are permitted to travel over only part of the route, DMG 66573 may be satisfied if an accident happens on the part of the journey from which the public are excluded².

1 SS CB Act 92, s 99(1)(b)(ii); 2 R(I) 15/57; R(I) 3/59

66592 DMG 66573 does not apply to employees of a public transport business travelling to and from work free of charge if the vehicle on which they are travelling is, at the time, open for use by the public for transporting themselves or their goods.

Note: The situation may be different where the vehicle is not on a public service journey¹.

1 R(I) 8/62

66593 - 66594

Otherwise arising out of

66595 The requirement that the accident would otherwise have arisen out of the employment¹ (see DMG 66512 5.) simply extends the sphere of employment so that a journey which would be outside the course of the employment is brought within the course of the employment. Apart from this, employees must show that their activities during the journey have not caused an interruption in the course of their employment. Employees injured

1. during such an interruption **or**
2. while acting outside the scope of the act of travelling, for example by skylarking

are not covered by the provision.

Example

A man who got off a slowly-moving bus was held to have merely acted negligently and had not stepped outside the sphere of his employment. If the vehicle had been

going at speed it might have been said that his action was so rash as to take the act wholly outside the scope of his employment².

1 SS CB Act 92, s 99(1)(b); 2 CI 182/49(KL)

66596 - 66610

Accidents happening while meeting an emergency

66611 In certain cases accidents happening to employees who are acting in an emergency are deemed to arise out of and in the course of their employment¹. The DM should use this provision only if the claim cannot succeed under the ordinary principles (see DMG 66321 et seq).

1 SS CB Act 92, s 100

66612 For DMG 66611 to be satisfied

1. the employee's accident must happen in or about any premises at which they are for the time being employed for the purposes of their employer's trade or business (see DMG 66615 - 66618) **and**
2. there must be an actual or supposed emergency at those premises (see DMG 66621 - 66625) **and**
3. the employee must be taking steps, in that emergency
 - 3.1 to rescue, help or protect persons who are, or are thought to be, or are thought possibly to be, injured or in danger **or**
 - 3.2 to avert or minimise serious damage to property (see DMG 66625).

Note: Any premises at which the employed earner is employed for the purposes of the employer's trade or business includes any place at which an employment training scheme or course is provided for IIDB purposes.

66613 This provision is of such limited application that the DM will only need to consider it where the employee cannot succeed under the ordinary principles governing the "arising out of and in the course of" condition.

66614

Premises, etc

66615 The premises need not belong to the injured person's employer. But they must be premises at which they are for the time being employed for the purposes of their employer's trade or business. For example a

1. trades person delivering goods **or**
2. salesperson visiting a firm to obtain an order **or**

3. plumber sent to work in a private house

would all come within the scope of this provision.

66616 The word “premises” has been held to have a wide meaning. It

1. includes

- 1.1 a ship on which a dock labourer was working¹ **and**

- 1.2 the land enclosing a bungalow² **and**

2. excludes

- 2.1 a passenger train on which a railway employee is travelling to work³
and

- 2.2 the public highway⁴.

Note: The part of a public highway that is immediately next to premises which are covered by this provision comes within the meaning of “in or about” such premises⁵.

1 R(I) 5/54; 2 R(I) 6/63; 3 CI 35/50(KL); 4 R(I) 52/54; R(I) 46/60; 5 R(I) 6/63

66617 The meaning of the phrase “for the time being employed” has been described as “somewhat ambiguous”¹. But as the expression includes a worker only temporarily on the premises, the time does not necessarily have to be prolonged².

1 R(I) 63/54; 2 R(I) 6/63

66618 The need for the employment to be for the purposes of the employer’s trade or business means that employees such as domestic servants, or “daily” cleaners, working at the employer’s private house, will rarely be helped by this provision.

66619 - 66620

Emergency

66621 The term “emergency” is not defined in statute or case law. The DM should accept any sudden, unexpected situation causing danger to people or property (including animals) as an emergency.

66622 The emergency must be in or about the relevant premises. An emergency in or about other premises is not an emergency for the purposes of the section. But such an emergency may create one at the relevant premises.

Example

A woman gives assistance at a fire in adjacent premises which threatens the premises at which she works. The DM accepts that there was an emergency in or about the relevant premises.

66623 Premises may have to be evacuated because of an emergency. However, once employees have left the premises, they have interrupted the course of their

employment unless they do something to bring themselves back into its scope (see DMG 66473).

66624 The emergency may be actual or supposed. It does not matter whether the emergency existed, or whether the injured person's assessment of the situation was accurate. But where there was no real emergency it must be shown that the injured persons

1. genuinely thought that there was an emergency **and**
2. were acting in accordance with what they thought was the situation.

The onus of proving this is on the claimant¹.

1 R(I) 5/54

Rescuing or protecting persons or preventing damage to property

66625 The injured person must be trying to

1. help people who are, or may be, injured or in danger **or**
2. protect property.

The provision cannot be used where there is no danger to persons or risk of damage to property¹ though claims may succeed under the ordinary principles of "arising out of and in the course of".

Note: Although animals are not mentioned specifically, they will normally belong to some owner and may be treated as property.

1 CI 280/49(KL)

Civil defence services

66626 The Civil defence services were disbanded on 31.3.1968. If a claim is received for an accident said to have occurred before that date the DM should consider whether

1. employment as a member of the Civil Defence Corps or as a member of an Industrial Civil Defence Unit was insurable employment¹
2. an accident which arose out of and in the course of a member's ordinary training in civil defence is an IA
3. as well as their ordinary training members might have been requested by their Corps or Unit authority to undertake duties of a public service nature if a major accident or other state of emergency occurred in peace time (see DMG 66627).

1 NI (II) Act 65, Sch 1

66627 Examples of duties for the purposes of DMG 66626 **3.** are

1. assisting in
 - 1.1 rescue **or**
 - 1.2 first aid **or**

1.3 welfare work

in connection with a disaster (for example, a railway accident, aircraft crash or storm or flood damage)

2. taking part in flood warning arrangements.

66628 The DM should regard duties in DMG 66626 **3.** and DMG 66627, if carried out under the direction of the Corps or Unit authority, as forming part of members' training in civil defence, and of their insurable employment. This means that an accident arising out of and in the course of such duties is an IA.

66629 - 66630

Risks which might not be attributable to employment

66631 Employees may suffer injury by an accident which, although it happens during the course of the employment, is caused by something not directly connected with the employment. Such an accident cannot normally be said to arise out of the employment. But the "arising out of" condition may be treated as satisfied¹ if

- 1.** the accident arises in the course of the employment **and**
- 2.** the accident
 - 2.1** consists of or is caused by the employee being struck by any object or by lighting **or**
 - 2.2** is caused by someone else's misconduct, skylarking or negligence **or**
 - 2.3** is caused by some action taken in consequence of such misconduct, skylarking or negligence **or**
 - 2.4** is caused by the behaviour or presence of an animal (which includes a reptile, bird, fish or insect) **and**
- 3.** the employee did not directly or indirectly induce or contribute to the occurrence by their conduct outside their employment or by any act not incidental to the employment.

The DM should interpret the above in a broad common-sense way aiming to apply it in employees' favour to accidents at work of which they are the innocent victim of circumstances.

1 SS CB Act 92, s 101(a)(b)(c)

66632 If the evidence shows that an employee's actions were totally unconnected with their employment and took them out of the course of their employment, DMG 66631 does not apply¹.

1 SS CB Act 92, s 101(a)

Example

This provision would not apply to a person who while at work teases and angers an animal and is attacked by it, unless that is what they are employed to do.

66633 Guidance on situations where DMG 66631 may apply is given at DMG 66634 - 66659. Where this provision does not apply the DM should consider the ordinary principles. See also DMG 66671 - 66713 for guidance on common risks.

Skylarking

66634 The DM can usually treat an accident as having arisen out of the employment if while in the course of their employment an employee suffers an accident

1. as a result of someone else's skylarking **or**
2. while trying in a proper manner to stop the skylarking of another person **or**
3. while trying to put right damage or disturbance caused by another person's skylarking **or**
4. while taking other steps in consequence of such skylarking.

66635 But employees who are involved in skylarking, either by themselves or with others, normally interrupt the course of their employment. Any accident resulting from the skylarking does not arise in the course of the employment. DMG 66631 cannot be applied, and the DM should disallow the claim under the ordinary principles.

66636 Employees who cause skylarking and are injured as a result after they have ceased to participate cannot benefit from DMG 66631. This is because by setting in motion the chain of events leading to the accident, they have directly or indirectly induced or contributed to the event by an act that is not incidental to their employment¹.

Note: This applies even if the act did not take them outside the course of their employment.

1 SS CB Act 92, s 101(c)

66637 In DMG 66636 mere assumption or speculation that the employees started the skylarking is not enough to deny them the benefit of DMG 66631. There must be clear evidence that

1. their conduct or activities were a cause of the accident **and**
2. the activities were either outside of or not incidental to the employment.

Although an act of retaliation to skylarking might be conduct contributing to the accident, an act merely to rebuke the person's skylarking is not¹.

1 R(I) 3/67

66638 If employees remain in the course of their employment but cannot benefit from DMG 66631 because they contributed to the accident by an act not incidental to their employment, their claim may still succeed. To do so they must establish that there is something in the

1. character of their employment **and**
2. surrounding circumstances

that creates a risk, peculiar to the employment, of the particular act of skylarking¹. This will usually apply if skylarking of a particular kind is a traditional custom in the employment.

1 CI 334/50(KL)

66639 Where skylarking creates an emergency and a participant in the skylarking is injured by trying to deal with the emergency the DM

1. can usually accept that by taking remedial action, the claimant has stopped skylarking and resumed the course of employment¹ **or**
2. may be able to deem that the accident arose out of and in the course of the employment (DMG 66611 et seq)².

1 R(I) 9/54; 2 SS CB Act 92, s 100

66640 DMs may still accept the accident as arising out of and in the course of the employment if

1. they accept that a skylarking accident occurred in the course of the employee's employment **and**
2. DMG 66631 is not satisfied because of the employee's contribution to the accident **and**
3. the immediate and direct cause of the injury is itself a risk of the injured person's employment.

Example

A man in the course of his employment is pushed by a fellow worker for a joke. As a result he accidentally falls into some dangerous machinery and is injured. In this case the accident arises out of and in the course of his employment because the injury is caused by the machinery and skylarking is only an antecedent cause¹.

1 R(I) 8/54

66641 - 66644

Assault or dispute

66645 Injury by assault amounts to injury by accident. The result is generally caused by another person's misconduct or results in the victims being struck by an object. The

DM can usually treat the accident as arising out of the employment under DMG 66631 if the accident occurs in the course of a person's employment.

66646 If the evidence shows that the accident arose in the course of the employment but the injured person in some way contributed to the accident the DM should consider whether

1. the injured person directly or indirectly induced or contributed to the occurrence by
 - 1.1 their conduct outside the employment **or**
 - 1.2 any act not incidental to their employment¹
2. the person contributed to the accident and, if so, contributed to it to a material extent (see DMG 66647)
3. employees who by their behaviour outside working hours, and not connected with their work, provoke an assault which is committed during working hours, are not covered by DMG 66631 because they have contributed to the occurrence by their conduct outside their employment (see DMG 66648).

1 SS CB Act 92, s 101(c)

66647 For the purposes of DMG 66646 2. an act of retaliation to unprovoked assault might be considered as conduct contributing to the ultimate accident, but an act merely to remonstrate with the attacker does not¹.

1 R(I) 3/67

66648 Where DMG 66646 3. applies assumption or speculation whether the injured persons started the dispute is not enough to deny them the benefit of DMG 66631. There must be clear evidence that

1. their conduct or activities were a cause of the accident **and**
2. they were either outside or not incidental to their employment.

66649 An act that is not incidental to an employment and that provokes an assault may take the employee out of the course of their employment. Where this applies the DM should disallow the claim.

66650 If the accident arose in the course of the employed earner's employment but DMG 66631 does not apply the DM should consider

1. the ordinary principles on the "arising out of" condition **and**
2. the case law made before the provisions described in DMG 66631 were made (this case law is particularly important in these cases)¹.

Note: Employees acting very provocatively may convert a dispute about work into a personal dispute. Whether they do so is a question of fact and degree which must be decided on the merits of the particular case².

1 CI 51/49(KL); CI 248/50(KL); R(I) 41/51; R(I) 47/51; 2 CI 3/48(KL); CI 5/50(KL)

Negligence

66651 Cases where employees have been injured in the course of their employment by an accident arising as a direct result of a careless or negligent act of another person are usually covered by DMG 66631¹. Accidents caused by a person's own negligence (see DMG 66471 - 66472) are outside the scope of DMG 66631.

1 SS CB Act 92, s 101

66652 - 66654

Animals and insects

66655 Injury caused by an animal or insect is normally caused by an accident. If the injury occurs while employees are acting in the course of their employment, the DM can generally treat the accident as arising out of the employment under DMG 66631. Otherwise, the DM should apply the ordinary principles governing "common risks" (see DMG 66695).

1 SS CB Act 92, s 101

66656 - 66658

Forces of nature

66659 The forces of nature, such as bad weather, lightning, landslip, are common risks (see DMG 66693). An accident arising in the course of an employee's employment may be caused by such forces

1. directly, for example being struck by lightning **or**
2. indirectly, for example being struck by a falling tree or wall in a gale.

Note: As explained in DMG 66631 the DM can treat most such accidents as arising out of the employment. In the case of lightning there are specific provisions. Most other accidents caused by the forces of nature result in the claimant's being struck by an object.

66660 - 66670

Common risks

66671 During the course of their employment employees may suffer injury by accident caused by risks which are shared by people who are not employees. These risks are usually referred to as “common risks”. They include

1. forces of nature (see DMG 66693)
2. animals, insects and infections (see DMG 66695 - 66696)
3. poisoning or injury from refreshment (see DMG 66699)
4. vaccination or injection (see DMG 66701)
5. foreign body in eye (see DMG 66703)
6. street risks (see DMG 66704)
7. locality risks (see DMG 66709).

66672 Certain accidents arising from common risks can be treated, if they arise in the course of employment, as arising out of the employment¹ (see DMG 66631 - 66659). Where these provisions do not apply the DM should consider the ordinary principles governing “arising out of and in the course of” employment and the guidance at DMG 66675 - 66713.

Note: Most of the decisions in DMG 66675 - 66713 used to illustrate the ordinary principles were given before the introduction of the provisions described in DMG 66631.

1 SS CB Act 92, s 101

66673 - 66674

General principles

66675 Where the provisions of DMG 66631 do not apply, case law has accepted the principle evolved under legislation¹ in force prior to 5.7.48. That is that the fact that a risk may be common to all mankind does not disentitle a person to compensation if in the particular case it arises out of the employment².

1 WC Act 25; 2 CI 123/49(KL); R(I) 13/60

66676 The effect of this is that

1. an accident arises out of the employment in such cases if the employees' employment exposes them to a special risk of the accident occurring to them
and
2. the accident does not arise out of the employment if the employees are not exposed to a special risk (unless, exceptionally, the accident leads to an injury which itself is caused by a risk of the employment).

66677 - 66680

Antecedent and proximate causes

66681 The DM may sometimes need to distinguish between

1. the original (antecedent) cause of an injury **and**
2. the immediate (proximate) cause of the event

which gave rise to the injury.

Example 1

An untoward event which occurs in the course of an employee's employment but does not arise out of the employment, for example an epileptic fit, may immediately trigger a further untoward event, for example falling and injuring the head. In such cases the second event may be considered separately to decide whether the resulting injury arose out of the employment.

Example 2

In the course of his employment, John simply collapses without sustaining an injury or suffering some pathological change caused solely by his disability or disease. The accident does not arise out of his employment¹, unless the collapse or pathological change is

1. contributed to **or**
2. precipitated by

an incident associated with the employment, for example by some incapacitating strain on a previously disabled limb².

1 R(I) 73/51; R(I) 5/63; 2 CI 5/49(KL); R(I) 19/63

66682 The DM need only consider the relevance of a proximate cause of injury where the claim would otherwise be for disallowance because the antecedent cause of the accident was not a risk of the employment, for example a pre-existing disease or force of nature.

Example

An injury sustained in a fall may be regarded as having arisen out of the employment even though there is no special risk or hazard. This applies even though the fall itself would possibly not have qualified as an IA because it was due to

1. fainting **or**
2. some other constitutional weakness¹.

1 R(I) 11/80

66683 It is essential that DMs should distinguish between the cause and effects of a collapse or fall when investigating an alleged IA. Where benefit is claimed for an accident accepted under DMG 66682, the DM should

1. describe the accident in terms of the injury sustained as the result of the fall **and**
2. not simply as "collapse" or "fall at work".

66684

Pre-existing disability or disease

66685 The DM usually needs to consider proximate and antecedent cause in cases where employees

1. are already suffering from a disablement or disease **and**
2. sustain an injury by accident in the course of their employment.

66686 In deciding whether the injury by accident arises out of the employment or is due entirely to causes peculiar to the injured persons themselves the DM must consider whether there is an added risk caused by the employment¹ bearing in mind that if

1. in the course of their employment an employee simply collapses or suffers a pathological change caused solely by their disability or disease, the accident does not arise out of the employment²
2. an incident at work contributes to the collapse or change, or triggers it, the accident arises out of and in the course of the employment³.

1 CI 118/49(KL); R(I) 47/56; R(I) 5/63; 2 R(I) 73/51; R(I) 5/63; 3 CI 5/49(KL); R(I) 19/63

Example

A person collapses solely due to his disability or disease. In so doing he falls from a height or on to some machinery or other property of the employer and is injured by that contact. In this case a combination of the approaches in **1.** and **2.** is needed. The fall itself does not arise out of the employment, but the injury is caused by a risk of the employment and so does arise out of the employment¹.

66687 The DM should action cases involving an apparently spontaneous injury¹ (sometimes described as "idiopathic") in accordance with the guidance at DMG 66686.

1 R(I) 6/82

66688 - 66690

Specific aspects of common risks

66691 DMG 66693 - 66703 gives guidance on some of the more common risks. The DM should consider that guidance in conjunction with the general principles in DMG 66671 - 66686.

66692

Forces of nature

66693 For an accident caused by a force of nature (wind, snow, ice, landslip, etc) to have arisen out of a person's employment, without relying on DMG 66631¹, it must be established that

1. the risk arose directly out of the employment² **or**
2. the person was exposed to a greater risk by reason of their employment, than they would have been had they not been so employed.

1 SS CB Act 92, s 101; 2 CI 123/49(KL)

66694 When considering DMG 66693 it is not enough to establish that it was the employment which took the person to the place where the accident occurred and the DM should note that

1. there must be a special risk created directly by some circumstance of the employment or a risk inherent in the locality¹
2. the mere presence of a draught, unless extremely exceptional, does not constitute such a risk².

1 R(I) 3/51, R(I) 11/58, R(I) 4/61; 2 R(I) 32/57

Animals, insects and infections

66695 Accidents involving animals or insects (DMG 66655) normally fall within the scope of DMG 66631¹. But this does not apply where the case involves injury in the form of an infection leading to disease or ailment.

1 SS CB Act 92, s 101(b)(iii)

66696 Infection by the germ of a disease cannot constitute an accident arising out of an employment under the ordinary principles. The only exception to this is where it can be shown that because of the nature of the employment (including anything reasonably incidental to it) employees run a greater risk of infection while following their employment than people not so engaged¹.

1 CI 36/50(KL); R(I) 66/54

66697 Proof of greater risk in DMG 66696 is obviously more difficult in the case of a fairly common disease, such as influenza than in the case of a rarer one, such as typhoid¹. The DM should bear in mind that

1. the infection must have been an accidental occurrence, not the result of a process or unhealthy working conditions over a period of time²
2. so long as it is reasonably probable that there was such an accidental infection it is not essential to identify the particular occurrence³
3. a special risk may be established if the employment
 - 3.1 involves contact with a source of infection⁴ **or**
 - 3.2 causes a wound or abrasion through which the infection can enter, even if the actual entry of the infection occurs outside the course of the employment⁵.

1 CI 159/50(KL); CI 401/50(KL); 2 CI 211/49(KL); CSI 21/49(KL); CI 83/50(KL); 3 CI 12/49(KL); CI 45/49(KL); CI 46/49(KL); 4 CI 211/49(KL); CI 401/50(KL); 5 R(I) 71/51; R(I) 75/51

66698

Poisoning or injury from refreshment

66699 An attack of food poisoning, or other injury due to eating or drinking, such as catching brucellosis by drinking or eating unpasteurised milk or milk products, constitutes injury by accident. DMG 66631 et seq¹ can rarely be applied to such accidents and the DM will usually need to consider the ordinary principles governing “common risks”. These provide that an accident caused by a meal eaten in the course of employment can only be said to arise out of the employment if the employment was a direct cause of the food poisoning or injury¹.

1 SS CB Act 92, s 101

66700 The point to establish is the source from which the employees obtained the food¹ and the DM should note that

1. if the food was brought from home or was obtained from a source outside (and not connected with) the employment, there is no causal connection between the employment and the condition of the food
2. if the food was obtained under arrangements made by the employer for supplying refreshment to employees, the risk of the food being defective is a risk of the employment and there is a causal connection between the employment and the condition of the food
3. poisoning or injury resulting from eating such food as in 2. would arise out of the employment, unless the employees added a different risk not connected with the employment.

Note 1: The only exception to 1. is if it can be established that there is a special risk, directly related to the employment, of the food becoming contaminated.

Note 2: DMG 66700 2. applies whether the food was supplied free or was purchased by the claimant².

1 SS CB Act 92, s 101; 2 R(I) 3/63

Vaccination or injection

- 66701 When considering vaccination or injection the DM should note that
1. a vaccination or injection does not in itself constitute personal injury by accident, but an unforeseen infection or unexpected mental or physical reaction which results from it may do so
 2. where employees suffer an injury as in 1. the decision whether it has arisen out of and in the course of their employment depends on how and why the vaccine or injection was given.
- 66702 Where DMG 66701 2. applies, if an employer required or encouraged employees to have the vaccine or injection because of a risk of the employment, the DM should normally accept the accident as an IA.

Foreign body in eye

- 66703 If a particle of grit or other foreign body accidentally enters the employee's eye in the course of their employment it is usually possible to treat it under DMG 66631 et seq as an accident arising out of the employment. This is because it will usually constitute being struck by an object. The employees do not need to have suffered personal injury¹. If DMG 66631 et seq does not apply the DM should consider the case under the ordinary principles.

1 SS CB Act 92, s 60(3)

Street risks

- 66704 The risk of suffering an accident by some cause incidental to the streets, for example
1. an accident with a vehicle **or**
 2. slipping on an icy pavement **or**
 3. a collision with a dog
- is a "common risk". Such an accident occurring in the course of employment can be held to arise out of the employment only if the conditions of DMG 66631 are satisfied or there is a special risk arising directly from the employment.
- 66705 If the employee's employment involves being in the street the special risk test is normally satisfied by the requirement to be in the street, whether their presence there is habitual or not¹. The essential points in most street accident cases, irrespective of whether they are considered under DMG 66631 or under the ordinary principles governing "common risks", are, whether the employees

1. were in the street in the course of their employment, that is, did the employment cause them to be there
2. were acting in the course of their employment
3. took themselves outside the course of their employment by their actions².

1 R(I) 71/53; R(I) 13/60; 2 R(I) 10/52; R(I) 39/53

66706 - 66708

Locality risks

66709 An employee's employment may bring them to a place which is potentially dangerous, for example a place where

1. a wall may collapse **or**
2. the ground is treacherous.

Such a danger is generally spoken of as a risk of the locality. It may also be a "common risk".

66710 Accidents arising in the course of employees' employment in these circumstances can often be treated as arising out of the employment¹ (DMG 66631). If this provision cannot be applied and the risk was a common one, that is it was shared by people not so employed, the DM should consider the case under the ordinary principles. In this connection DMs should note that

1. it must first be established that there was a special risk related to the place and it is not enough that something dangerous happened while the employed earner was in that place²
2. if there was a special risk as in 1. and the accident was caused by the inherent danger of the place, they can accept the accident as arising out of the employment³.

1 SS CB Act 92, s 101(a); 2 R(I) 76/53; R(I) 46/54; 3 R(I) 4/61

66711 - 66712

Events involving shock or fright

66713 Employees may suffer shock or fright while at work through witnessing or learning of an event of a frightening or tragic nature. The DM should note that

1. though people may not have been involved in the event themselves, the shock or fright and its after-effects may constitute personal injury by accident arising in the course of their employment
2. whether the accident also arises "out of" the employment depends on whether there was a material connection between the event and the employment.

Example 1

A person who suffered from nervous debility after the shock of seeing a colleague killed in an IA suffered personal injury by accident¹.

Example 2

Fright, provoked by having to act in an emergency caused heart failure in a man already suffering from heart disease. This constituted an accident arising out of the employment².

Example 3

The shock which a man suffered on being told that his son had been fatally injured in an IA at the quarry where they were both employed was not an accident arising out of his employment but out of their relationship³.

1 R(I) 49/52; 2 R(I) 42/53; 3 R(I) 22/59

66714 - 66749

Further conditions for benefit

66750 The acceptance of an IA is only the first condition to be satisfied in deciding a claim. Other conditions specify

1. for claims made before 5.12.12, that the accident must have happened on or after 5.7.48¹
2. that the employed earner must have suffered personal injury in the accident²
3. that there must be disablement of at least 14% as a result of the accident - this can be achieved by aggregation of smaller assessments³ (see DMG Chapter 69) **and**
4. that entitlement to benefit cannot begin until 90 days after the relevant accident, excluding Sundays⁴ (see DMG Chapter 69).

Note: For claims made from 5.12.12 the date 5.7.48 is no longer of relevance⁵. Therefore DMs can consider entitlement to IIDB where a claimant has had an IA before 5.7.48⁶.

1 SS CB Act 92, s 94(1); 2 s 94(1); 3 s 103(1); 4 s 103(6); 5 WR Act 12, s 64(1); 6 SS CB Act 92, s 94(1)

On or after 5.7.48

66751 For claims made before 5.12.12, the onus of proving that the date of an IA was on or after 5.7.48, and not before, is on the claimant¹. This is unlikely to present problems. The fact that an exact date cannot be fixed does not matter (see DMG 66221 et seq) if the evidence shows with reasonable certainty that it occurred on or after 5.7.48².

1 CI 25/49(KL); CI 56/49(KL); 2 CI 46/49(KL)

66752 - 66754

Personal injury

66755 In deciding the accident question the DM need only consider the personal injury question

1. where the injury is the accident **and**
2. when establishing entitlement.

66756 The DM does not often have to give a separate decision on the personal injury question because it is so closely linked with the disablement question. If the DM accepts that disablement results from the relevant accident, there must have been personal injury. Where the "personal injury" factor arises the DM should follow the guidance in DMG 66757 et seq and in DMG 66111 et seq.

66757 In deciding what constitutes personal injury DMs should note that

1. there is a clear distinction between “personal injury” and “accident” in that personal injury has to be caused by accident and cannot, in and of itself, be considered to be an accident¹
2. to establish that they suffered personal injury, claimants must show they suffered a physiological (or as doctors prefer a pathological) change for the worse
3. there must be a particular moment at which the change occurred and the claimant does not have to prove exactly when that moment was, but the evidence must show that there was such a moment²
4. they may also accept a change for the worse occurring at a particular time as personal injury even if it is the result of more than one event, that is where it is caused by the cumulative effects of a series of minute but separate identifiable accidents such as frequent
 - 4.1 slight cuts
 - 4.2 burns
 - 4.3 abrasions
 - 4.4 strains
5. where the change has developed gradually over a long period it is usually a case of process rather than of accident³
6. “personal injury” includes any change for the worse affecting the mind or body
7. it does not include injury to reputation or to property such as clothing, spectacles or artificial limbs⁴, but may include damage to prostheses which cannot be freely attached or detached⁵.

*1 Secretary of State for Work and Pensions v Scullion [2010] EWCA Civ 310; [2010] AACR 29;
2 R(I) 52/51; 3 R(I) 11/74; 4 R(I) 7/56; 5 R(I) 8/66*

66758 A person need not, at the time of the accident, have displayed any external physical sign of injury. But the DM should ensure that there is satisfactory evidence that claimants have suffered some material change for the worse before accepting there has been personal injury.

66759 In considering DMG 66758 the DM should note that

1. cuts, scratches and bruises, even if minor, are usually substantial enough to be accepted as personal injuries
2. more trivial and passing conditions, such as
 - 2.1 pin pricks **or**
 - 2.2 vomiting

should not be accepted as personal injuries unless there is evidence that the condition has given rise to material after-effects

3. pain is not the same thing as personal injury, and a blow or strain having no effect other than passing pain does not constitute personal injury; some significant change lasting for an appreciable length of time is essential¹
4. where the onset of pain is merely a symptom of an underlying constitutional condition, it does not amount to personal injury even though the occurrence of the pain coincided with an incident at work (but see DMG 66111 et seq).

1 R(I) 19/60

66760 When making findings on the nature or extent of the injury DMs should note that

1. they are required to reach a decision on the nature or extent of any injury which claimants may have sustained based on medical evidence **and**
2. any finding made, for example by a FtT in recording their findings of fact, is not binding on them or the medical advisors for the purposes of any further decision on a subsequent claim¹.

1 SS Act 98, s 29(6)

66761 It is normally necessary for the nature and extent of the injury to be examined in detail before reaching a decision on the personal injury question. The description of the condition at the start of incapacity is often vague because

1. it is difficult to make a precise diagnosis **or**
2. the doctor does not wish claimants to know the true nature of their condition.

66762 The DM should consider the alleged injury and the events leading up to it where there is

1. no physical evidence of injury, as with a suspected strain **or**
2. a contention that pain was suffered following an incident.

This is because the events leading up to the injury may reveal a history of gradual development of the condition which has nothing to do with an accident.

66763 - 66999

Appendix 1

Medical advice required on the accident question

(see DMG 66116 - 66120)

SEMA

Claimant date of birth Occupation

I have been unable to decide that this claimant has suffered an industrial accident. The claim is based on an alleged incident on (date) when (describe onset of relevant symptoms] **See Note 1**

To assist me in determining the claim, may I have your advice on the following points **See Note 2**

Question 1

(a) on the balance of probability, please state whether there was a pathological change for the worse in the claimant's condition **or**

(b) a normal reaction which would be expected under the circumstances. Please comment on the features of the condition which support your opinion **and** **See Note 3**

(c) if there was a pathological change what was it **and**

(d) in what way if at all did the events as described contribute to the change?

The claimant's consent to obtaining factual reports has been obtained and all BI8's are included with the file.

..... DM

..... (date): (Tel no) (Office)

Note 1: The MA will require a factual account of the claimant's activities at the relevant time. Do not simply record what has been contended or stated by the claimant or others.

Note 2: These are the types of question that usually arise; however it is for you to specify the areas of doubt in each individual case. Do not ask questions which are irrelevant e.g. do not ask whether there was a pathological change if it is already apparent that there was one and the only doubt is on causation.

Note 3: In cases involving psychological or stress related illness, whether there was a pathological change for the worse in the claimant's condition as a result of the incident or whether the claimant's condition has occurred over a period of time, is often the issue. Sometimes there has been a 'normal' reaction to an event e.g. distress/elation when a death/birth has been witnessed. It is important that the advice received clearly states whether the change was pathological and if this is due to the specific incident. If the claimant appears to have a history of depression or similar illness you will need to ensure the MA is aware of this.

Appendix 2

Physiological change/pathological change

Physiology: physiology is the study of the normal functioning of the body

Pathology: pathology is the study of disease and disease processes.

The causes of disease fall into the following broad categories

Congenital - either inherited due to an abnormal gene or chromosome or acquired pre-birth (**Note** a congenitally caused disease may not manifest itself until adult life)

or

Acquired - e.g. infections, metabolic disease, degenerative disease etc.

1. A physiological change is a change which occurs in response to the body's activities. Examples are
 - 1.1 the heart rate increases when running, or when afraid
 - 1.2 sweating when hot
 - 1.3 shivering when cold
 - 1.4 being upset by hard words or witnessing unpleasant scenes
 - 1.5 being elated on hearing good news
 - 1.6 an increase in the size of muscles as a result of exercise.
2. A pathological change is a change in the body or mind which occurs as a result of a disease or injury. Examples are
 - 2.1 an increase in heart rate due to an over-active thyroid gland
 - 2.2 arteriosclerosis in the arteries
 - 2.3 an inguinal hernia
 - 2.4 schizophrenia.

A physiological change is not necessarily temporary, nor is a pathological change necessarily permanent. The body has the capacity to heal itself, even in the absence of medical intervention. For example, a fracture can heal even if there is no orthopaedic treatment; psychiatric disorders in particular are rarely permanent.

A pathological change is not necessarily disabling. For example a fungal infection of the nails does not cause any functional disability.

Hence the terms physiological change and pathological change are not the same and are not therefore interchangeable.

Mental Health Conditions

General

Mental health conditions are common in the community. About 30% of general practice attendances are due to psychiatric disorders. The average GP can expect to be consulted by one in seven of his patients because of psychiatric disorder in one year.

Causation. The cause of most psychiatric conditions is unknown, but there are a range of factors which are important in the causation. There are nearly always several factors contributing to the disease, as opposed to there being just one factor contributing to the onset of the disease. The following factors are involved in the development of psychiatric illness.

Predisposing effects e.g. genetic predisposition, effects of experiences before birth and in childhood, physical and/or sexual abuse, chronic illness etc.

Precipitating effects e.g. a wide range of stressful life events and social events, such as bereavement, marital breakdown, redundancy etc., acute physical illness; drugs.

Perpetuating effects e.g. development of chronic physical illness, social circumstances, lack of social support.

Diagnosis is based mainly on recognised patterns of subjective symptoms which are volunteered by the patient or elicited during a clinical interview. With a very few exceptions, there are no objective markers of disease, such as X-rays or laboratory tests by which the diagnosis can be confirmed.

Prognosis. Psychiatric illnesses are rarely permanent. Many patients recover, and others relapse in the event of experiencing another precipitating factor.

Notes on specific mental health problems

Stress

Stress is defined as an excess of environmental demands over the individual's capacity to meet them. Stress is a part of normal daily life. Stress and its consequences are not necessarily always adverse. Some occupations and lifestyles are more stressful than others, and some individuals are more prone to react to stressors (i.e. the stressful events and situations) than others. However "stress" is a term frequently used by both the physician and the general public to describe both the stressors and the consequences of their action, the strain, on an individual's. The adverse effects are described as **stress reactions**.

Occupational stressors cannot easily be distinguished from other stressors. In an individual it is likely that both occupational and non-occupational stressors contribute to the stress reaction.

There is no simple way of predicting what will cause harmful levels of stress. People respond to various types of pressure (stressors) in different ways. A demanding job for one person may be experienced as an exciting challenge which itself produces a high degree of contentment and satisfaction, whereas the same job may be viewed as a daunting task by another. A sense of control is pivotal. When people feel that they are in control of situations, stress becomes a challenge instead of a threat. When this crucial sense of control is lacking, stress can spell crisis with probable adverse effects on health and wellbeing for the affected individuals and the community.

Patients with "stress" have increasingly made the self diagnosis of post traumatic stress disorder (PTSD), possibly believing that the terms are interchangeable, or that PTSD is a more severe manifestation of stress. However in most cases the diagnosis of PTSD cannot be confirmed due to the absence of a single acute stressor outside normal human experience.

Post traumatic stress disorder

Post-traumatic stress disorder (PTSD) is a condition resulting from an experience that is life-threatening or extremely dangerous to the self or others. It may impair social, occupational and other important areas of functioning.

The incidence varies, but PTSD occurs in around 15% of people exposed to a major disaster. It is not clear why some people develop persistent PTSD, others a more transitory condition, while the very great majority of people are apparently unaffected by an overwhelmingly traumatic event. There are pre-disposing factors which may explain why some people develop PTSD whilst the majority do not. There are several pre-disposing factors that have been identified which may account for the fact that only a small proportion of people exposed to a major untoward event develop the disorder

- (i) gender - the disorder is more common in women
- (ii) prolonged childhood separation from parents
- (iii) family history of anxiety
- (iv) family history of antisocial behaviour
- (v) pre-existing anxiety or depression
- (vi) neurotic personality
- (vii) age - PTSD is more common in children and in the elderly.

The average duration of PTSD is no more than two years following onset but there are cases which persist for more than 50 years.

The characteristics of PTSD include re-experiencing the traumatic event in some way, avoidance of stimuli which may cause recollection of the event, and increased arousal. The majority of the features overlap with other specific psychiatric illnesses.

PTSD must not be confused with other specific psychiatric illnesses or with milder forms of reaction to stress, including acute stress reaction, adjustment disorders, or prolonged duress stress disorder.

The more traumatic the event, and the closer the involvement of the person concerned, the greater the likelihood of subsequent PTSD.

There are no routine objective tests for PTSD. Clinical appraisal rests on the history and largely subjective symptoms.

Accuracy in the diagnosis of PTSD can only be achieved by close attention to eliciting a thorough description of the alleged extremely threatening event; to the pattern of evolution of presenting symptoms and examination of the person's mental state, supplemented by a series of simple questions. Interview technique, with the use of "open-questions" is of pivotal importance.

The content of the examples in this document (including use of imagery) is for illustrative purposes only